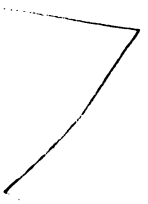
International Aspects
of the
Labor Problem

By
BOUTELLE ELLSWORTH LOWE

Submitted in partial fullfilment of the requirements
for the Degree of Doctor of Philosophy,
in the Faculty of Political Science,
Columbia University

Published by
W. D. Gray
106 Seventh Ave., N. Y.



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PREFACE

It is the aim of this essay to trace the history of the international movement to protect labor and to present the labor treaties that have resulted therefrom. Apart from the *Archives diplomatiques,* the publications that principally have been used as sources are: *La Protection internationale ouvrière* by Dr. L. Chatelain; *Le Droit international ouvrier* by Professor Ernest Mahaim; *Bulletin des Internationalen Arbeitsamtes* (1902-1910); Bulletin of the International Labor Office (1906-1918); American Labor Legislation Review (1911-1918); *Bulletin trimestriel de l'association internationale pour la lutte contre le chomage* (1911-1914); *Publications de l'Association internationale pour la protection légale des travailleurs* No. 1, 2, 3, and 4; and English publications of the same office, No. 5, 6, 7, and 8.

The writer wishes to express his appreciation of the readiness of Dr. John B. Andrews, Secretary of the American Association for Labor Legislation, to place source material at his disposal, and also of the helpful suggestions of Honorable John Bassett Moore of the Chair of International Law at Columbia University.

B. L.

CHAPTER I

Genesis of the Movement

Origin of the International Labor Movement [1]

In 1818, when the statesmen of Europe assembled at Aix-la-Chapelle to attempt one of the periodic adjustments of the affairs of that continent, the fertile brain of a Scotchman addressed to the Congress a petition, unique in its declaration that a prime task for the governments of Europe was the international fixation of the legal limits of normal industrial conditions for European society. The Scotchman through whom a proposition of this order thus found initial expression before an international assembly, was the noted philanthropist and social worker, Robert Owen; [2] but although standing as he did, the prophet of a new order of diplomacy, the statesmen of that day spared but scant attention to his proposals and gave to them no practical result. After a lapse of several decades, Mr. Owen drew up a declaration entitled: "A LETTER ADDRESSED TO THE POTENTATES OF THE EARTH IN WHOM THE HAPPINESS AND MISERY OF THE HUMAN RACE ARE NOW INVESTED; BUT ESPECIALLY TO AUSTRIA, FRANCE, GREAT BRITAIN, PRUSSIA, RUSSIA, SCANDINAVIA, TURKEY, AND THE UNITED STATES OF

[1] *Cf. L.* Chatelain, *La Protection internationale ouvrière.* Chapters II and III. E. Mahaim, *LeDroit international ouvrier,* p. 183 *et suiv.*

[2] *Supplementary Appendix to Vol. I. of the Life of Robert Owen.* pp. x-xii, 209-222.

NORTH AMERICA; BECAUSE THEIR POWERS ARE NOW AT PEACE WITH EACH OTHER, AND COULD WITHOUT WAR, EASILY INDUCE ALL THE OTHER GOVERNMENTS AND PEOPLE TO UNITE WITH THEM IN PRACTICAL MEASURES FOR THE GENERAL GOOD OF ALL THROUGH FURTURITY," in which among other things he said: ". . . if you will now agree among yourselves to call a congress of the leading governments of the world, inviting those of China, Japan, Burma, *etc.*, and to meet in London in May next, I will, should I live in my present health to that period, unfold to you at that congress the natural means by which you may now, with ease and pleasure, gradually create those surroundings in peace and harmony, which shall have a perpetual good and superior influence upon all of our race." This proposal was not adopted.

Apart from Mr. Owen's own efforts, the idea of international co-operation for the control of industrial conditions was not seconded in any signal manner [3] until a Frenchman, Daniel Legrand by name, a manufacturer of Steinthal, Alsace, also undertook the task of impressing upon men of affairs the urgent need of such co-operation for industrial welfare. Imbued with the idea that in European industry there were conditions which were not susceptible of proper regulation by the individual action of nations, but which would readily lend themselves to such regulation under an accord of the powers, Mr. Legrand addressed various memorials to this effect (1840-1847) to the governments of

[3] *A.d.=Archives diplomatiques,* 1890 (2 *Serie*), t. XXXVI, p. 36-40.

The idea of international co-operation for the abatement of certain factory evils was expressed by the Frenchman, Villermé, who undertook, under the auspices of the Academy of Social and Political Science, an inquiry into the conditions of the laboring classes in the textile industry, and made his report in 1839. He said, however, that such "disinterestedness" was not to be counted upon, as it was without precedent.

Blanqui in his *Cours d'economie industrielle* (1838-1839) suggested international treaties to regulate conditions of competition. (See Mahaim, E-*Le Droit international ouvrier,* p. 188-189.)

Europe, memorials which suffered much the same fate as those of Mr. Owen, but which received from their author a vigorous sequel in the form of a letter sent not only to French authorities, but also to the Cabinets of Berlin, St. Petersburg and Turin. This letter was published four times in the years 1853, 1855, 1856, and 1857, respectively. It boldly stated the position that the solution of the problem of according to the laboring classes the moral and material benefits that are desirable, must be found in international labor law, without which industry suffers and the international competition of manufacturers escapes needed limitations; and that moreover things principally to be striven for comprise: elementary schools; instruction of young workers up to the time of their confirmation; Sunday schools for all ages; protection of the moral and material interests of the labor class by international legislation; the Gospel received into the heart and home of the laborer and his employer; Sunday rest; encouragement of the life and industry of the family by the State and by manufacturers, the extension of the benefits of savings banks to every locality; and old-age pension funds; concurrent with the attainment of all which, it is essential that there be the firm suppression by an international law on industrial labor, of the evils suffered by the laboring people including lack of instruction and education, child labor in factories, excessive labor, night-work, Sunday work, and the absence of proper age limits.

This array of wrongs, according to Mr. Legrand, could be remedied in part at least by the international adoption of provisions such as the following: the total prohibition of the work of male children under ten years of age and of females under twelve; the limitation of their work to six hours in twenty-four until thirteen years of age; the extension of the length of the workday to ten hours upon their attainment of the age of fourteen, with provision for a nooning of at least one hour; the proper certification of the age, school, and employment records of young employees; limitation of the work of adults to twelve

hours in twenty-four, none of which labor should be required prior to 5:30 a. m. or subsequent to 8:30 p. m.; the interdiction of Sunday or nightwork for young people under eighteen years of age and for the feminine sex altogether; proper regulation of unhealthy and dangerous trades, *etc.* Most of the reforms advocated by Mr. Legrand have since become the object of international investigation and some of them; *e.g.*, the night-work of women and old-age pensions, of international enactment.

To find the next noteworthy expression of this idea of protecting labor by measures international in scope, we must turn to a Swiss report addressed in 1855 to the Cantonal Council of Zurich by a Commission of the Canton of Glarus.[4] An international *concordat* to regulate the length of the workday, child labor, *etc.*, was suggested by this report, which also remarked the fact that competition between spinners could not be satisfactorily controlled without the creation, by international understandings, of greater uniformity in conditions of production; but since such an idea in that day and age of the world belonged to the category of "vain desires," it remained the duty of the moment to strive for greater uniformity in a sphere more limited. A movement for intercantonal labor legislation which originated in Glarus in 1852 may account for the interest shown by this Canton in the subject of international control.[5]

Soon thereafter (1856), in Belgium, Mr. Hahn introduced the subject of international labor regulation before an international Congress of benevolent societies convened in Brussels, with the result that the idea was discussed and officially endorsed by the Congress.

In the following year (1857) Germany witnessed the approbation of the idea by a Congress at Frankfort. The question succeeded to further publicity in that country in 1858 as a result of of the publication of Bluntschli's Dictionary of Political Science,

[4] *Ibid.* t. XXXVI. p. 40-41.
[5] *Ibid.* t. XXXVI. p. 47.

which dealt with the matter of international agreement on labor regulation. In the same year, Bluntschli and Braber, both advocates of doctrines of the socialist professors, broached the question of Sunday rest and came to the conclusion that practical results could be obtained only by an international agreement on the subject. Other German professors to add thought to the movement were Adolph Wagner and Brentano, the former proposing in his work, "Rede über die Sociale Frage," the protection of labor's class interests by international agreementts in such manner as would not be injurious to national industry, while the latter outlined, in his "Handbuch der Politick Oekonomie" the program of the Christian Socialist Labor Party. championing the prohibition of Sunday labor, the suppression of the factory work of minors and married women, the placing of certain limitations upon the work to be required of a laborer in a day, protection for national labor, and propaganda for the internationalization of protective labor laws.

In 1866, the International Workingmen's Association, known as the International, founded two years previous in London at a meeting of trade-unionists representing different countries, met at Geneva and formulated a series of resolutions to be thereafter included among the demands of labor. These resolutions embraced a maximum workday of two hours for children between nine and thirteen years of age, of four hours for those between thirteen and fifteen, and of six hours for those between sixteen and seventeen; the prohibition of the night-work of women and of all labor injurious to their health; a maximum workday of eight hours for all laborers and the prohibition of night-work, exclusive of necessary exceptions for certain industries. The Association also proceeded by manifesto to proclaim its conviction of the need for international labor regulation; this it continued to do in subsequent meetings, in which, as also in the Baltimore Convention (1866) of the National Labor Union of America, the idea of international co-operation was approved in a manner very encouraging to proponents of the principle. These early pro-

posals for banning the night-work of women in connection with the recommendation of international legislation are significant in the light of the international Convention on the subject signed forty years later. Out of the various proposals for restricting internationally the work of children, the general consensus of opinion now seems to favor fourteen as the minimum permissive age limit.

The meeting at Geneva is generally recognized at the first International Labor Congress; and the succeeding assemblages of the International, as well as those of various, socialistic and anarchistic organizations, are often put down to the credit and sometimes to the discredit of the international labor movement. It should be noticed, however, that the protective movement with which we are dealing in these chapters is primarily a social service and not a political party proposition. In so far as these congresses have advanced international legislation for the protection of labor, they may be rightfully included; but that they have also had quite other and distinctly political aims in exploitation of party platforms should be recognized. Many such congresses have been held, *e.g.* at London (preliminary, 1864), before which Karl Marx delivered the "inaugural address"; Geneva (1866); Lausanne (1867), where distinctly socialistic principles were first adopted by the International; Brussels (1868); Basel (1869), in which Bakunin and other anarchists joined, and to which the American National Labor Union * sent Mr. A. C. Cameron as the first American delegate to an international labor conference; London (1871); The Hague (1872), on the occasion of which anarchists were expelled from the International and its General Council removed to New York; St. Imier (1872), being a conference of anarchists; Geneva (1873), where were held the last of the conferences of the International, one representing socialistic, and the other, anarchistic elements; Dresden (1871); Paris (1886); Paris (1889); Berlin

* *Documentary History of American Industrial Society* by Commons and Andrews, Vol. IX, pp. 43-46, 338.

(1891); Zurich (1893); London (1896); Zurich (1897), etc. American participation in the career of the International brought no practical results other than a certain degree of co-operation among European labor interests to check the activities of the American Emigrant Company which under the sufferance of American legislation was engaged in the importation of contract labor to be used to meet employers' needs arising out of the exigencies of American strikes. As is well known, under the pressure of labor interests, American legislation subsequently reversed its policy in respect of contract labor.[1]

Various occupations and professions have also held international congresses, not so much however to further the enactment of international laws in general protection of labor as to put forward measures pertaining directly to occupational interests or to political party propaganda. For example, since 1890, the miners have held regular international congresses, a number of which have been under the domination of radical socialists. It is our purpose to discuss those assemblies and efforts that aim principally at international legislation as a means of properly safeguarding the interests of the laboring class, noting at the

[1] In this connection the last report (Fifth Annual Report, 1917, Washington) of the American Secretary of Labor is of interest: "In the summer of 1916 information concerning the destitute and dependant circumstances of certain refugees arriving in this country from Mexico was brought to the Department's attention. Notice was thereupon given to all officers of the Immigration and Employment Services throughout the United States to communicate with the inspectors in charge at Galveston, Tex., and Los Angeles, Cal., with respect to unfulfilled opportunities for employment in their respective zones, especially those in which the employer expressed a willingness to advance transportation. This action was taken with a view to alleviating the conditions of the refugees by directing them to places of profitable employment. The records show that the employment officers of the Department in widely separated parts of this country entered heartily into the work of securing opportunities for employment for these unfortunate persons, many employers agreeing to advance transportation." pp. 81-82.

same time other meetings and events by which the idea of international protection has been advanced.

In the year after the meeting at Lausanne, a French economist, Louis Wolowski, recognizing in foreign competition a condition compelling the industrial exploitation of children, young people, and women, intimated that unanimity of action to remedy the unfortunate situation, after the example of the measures internationally adopted for the suppression of the slave trade, constituted a consummation devoutly to be desired. So many treaties appeared to him to have been concluded with the aim of killing men that he wished to be able to witness the adoption of similar means to enable mankind to live, although in his estimation the international competition of industry had not as yet reached the dreadful pass of sacrificing human life. In 1873 he submitted his idea of international regulation to the French National Assembly, and in the following year Mr. J. B. Dumas likewise submitted a petition to the same Assembly, embodying a similar appeal.

Three years previous (1871) Chancellor Bismarck and the Austrian Government had failed to reach an agreement by negotiation with reference to certain standards of labor legislation.[8] Although an incident of this character might seem to a novice, like the first moves of pawns in a game of chess, of little serious import, it was nevertheless a portent of greater things to come.

The same truth was illustrated by events in Switzerland. Twenty-one years after the seemingly fruitless manifesto from the Swiss Canton of Glarus, previously alluded to, Colonel Frey of the Canton of Bale-Campagne, a Swiss Statesman, known in America as a volunteer in the Civil War, afterwards as Swiss Minister in Washington, and finally as President of the Swiss Republic,[9] delivered in 1876, before the legislative Chambers, an address[10] in which he raised the question as to whether it was ad-

[8] *G.B.=Bulletin des Internationalen Arbeitsamtes,* Bd. III, S. IX.
[9] Geo. Gifford, *U.S. Consular Reports,* July 1901.
[10] *A. d.* 1890. t. XXXVI. p. 41.

visable for Switzerland to pursue the subject of the conclusion of treaties uniformly regulating conditions of labor among the several industrial States, presupposing of necessity sufficient elasticity in such regulation to allow for dissimilar conditions of production among the different countries. He assumed in common with most of the early protagonists of the movement that suppression of industrial competition by international regulation constituted the best method of alleviating the hard lot of labor. Subsequent events proved that this agitation of the question was destined to produce fruitful results.

The subject was next adverted to by French socialists in congress assembled at Lyons, France, where a resolution espousing the cause of international labor legislation was adopted in 1877; this was followed in 1878 by a pronouncement in Germany on the part of Baron and Lohman favorable to international regulation protective of their industry and nationals; in 1879 the industrial Christian manufacturers of the French district, Nord, whose capital is Lille, declared to the effect that governments could and ought to regulate the relations of labor, and that by means of international negotiations; the same body, met in Paris, renewed the resolution two years later. In 1880 delegates of the Social Democratic Association in Switzerland announced themselves in favor of international intervention for the protection of labor. Not far from this time, there appeared two diametrically opposite views on the subject emanating from representative German authorities, Gustave Cohn, Professor at the University of Göttingen, and Lorenz von Stein, another advocate of the doctrines of the socialist professors, not all of whom, however, favored international control of labor. Lorenz von Stein defended the idea while Gustave Cohn proceeded to postulate the downright inapplicability of any such regulation by reason of the defects evident in existing labor law, the great diversity in industrial and economic conditions, and finally, the hostility of wageworkers themselves to a régime decreeing restrictions upon their faculty to

work and prohibiting their women and children from betaking themselves to the mills whenever they please.

In December of the year 1880, a motion was made by Colonel Frey before the Swiss National Council that the Federal Council be invited to enter into negotiations with the principal industrial States for the purpose of bringing about international factory legislation. The next year (1881) this proposal [11] received serious consideration by the National Council without arousing any opposition; it was acquiesced in hesitatingly, however; and it was demanded that the Federal Council be left free to choose the opportune moment for taking action in the matter. The opinion was expressed that satisfactory negotiations could take place only with such states as possessed factory legislation similar to that of Switzerland, *e.g.*, England and France, whereas with a country such as Austria, which possessed little or no similar legislation but whose industrial relation to Switzerland was of great importance, such negotiations must of necessity meet with grave difficulty and delay. The motion, so worded as to leave the time for action wholly to the discretion of the Federal Council, was adopted. In deference to this invitation, the Federal Council soon afterwards addressed to the Swiss Legations at Paris, Berlin, Vienna, Rome, and the Swiss Consulates General at London and Brussels a note calling upon them to procure from reliable sources such confidential information as would make it possible to know what States of Europe could be depended upon to cooperate in the matter of international regulation of labor in factories, and also to obtain the information necessary in order to determine the official proceedings best adapted to this end.

To the interrogations consequently submitted to the various powers, Belgium alone deigned no response. Her evaluation of the project must be measured by her silence.

The reply from France indicated that in general the Govern-

[11] *Ibid.*, t. XXXVI. p. 41. *et suiv.* (This citation deals with both the proposal and the replies.)

ment deemed it outside the province of the State to interfere with contracts between employers and employees or to curtail the liberty of labor, and that since such intervention was considered unwarranted nationally, the Government was inclined *a fortiori* to adopt an attitude unfavorable to the international treatment of the matter.

The Imperial Government at Berlin was likewise unprepared to co-operate, as it did not take kindly to the regulation of the matter by the dicta of treaties.

The Italian Minister for Foreign Affairs was curious to know which aspects of such a complex question were to be subjected to the procedure proposed: whether the work of women and children, sanitary conditions in workshops, strikes, large or small-scale industry, or all these phases of the problem combined.

The Austro-Hungarian Government exhibited great reserve with reference to the matter. It stipulated that its participation would be made conditional upon the preliminary receipt and examination of a copy of the measures proposed, upon assent to the same, and upon the certainty of the participation of the other important industrial States; and furthermore upon condition that it might authorize its representatives merely to make note *ad referendum* of the points recommended by the delegates, reserving to the Imperial Royal Government the ultimate decision.

The English Secretary of State for the Home Department was opposed, deeming it impracticable to conclude an international convention on the subject of factory regulation.

Such was the first official attempt on the part of a Government, and such the failure, to attain some practical result international in scope for the protection of labor. Discouraged for a time, Switzerland later returned to grapple with this self-imposed task and with more fortunate results. It is fitting to remark right here that to Switzerland more than to any other State belongs the credit and honor of being the pioneer in blazing a trail for the international regulation and protection of labor.

In 1882 a Congress bearing the name of "Verein für Sozial-tional factory regulation, was held at Frankfurt-on-Main. The men delegated to draw up a report on the question were Gustave Cohn, with the tenor of whose views we are already familiar, and Dr. Franck, manufacturer of Charlottenburg, who, on the other hand, preferred, like Lorenz von Stein, to add the weight of his opinion in favor of the movement, although he did not believe in unduly limiting the work of women and children who ought to be permitted to add their mite to forestall suffering in the rainy day of industrial crisis. In the same year, the German Catholic Party evinced interventional tendencies, recognizing in the insufficiency of state intervention in industrial relations an argument for joint effort on the part of governments, and it recommended an international conference on the problem.

Not long thereafter (1883), an assembly composed of French, English, Spanish and Italian representatives of labor met in Paris and entertained a motion, introduced by delegates from English trade unions, recommending international legislation. It was averred that in certain countries the organization of labor was rendered impossible by unjust enactments, and hence it became the duty of all to uphold the cause, strive for the ameliorations desired, and oppose laws obstructing national or international legislation for the protection of those too feeble to defend themselves against the abuses of the competitive system. In Switzerland also, there occurred during the course of the year a meeting of labor associations which urged the Helvetian Government to continue its efforts for international law regulatory of factory conditions, and created a commission charged with the prosecution of the movement among the working populations of France and Germany.

On the 25th of January 1884, the idea of international concord in the administration of labor law obtained its first expression before the French Parliament through the person of Count Albert de Mun whose address was followed by an order of the day

inviting the Government to make provision for international legislation unharmful to national industry and yet preserving for each State the means of protecting women and children against industrial evils. At Roubaix, in the same year, an International Labor Congress drafted resolutions relating, among other things, to international legislation for the prohibition of work of children under fourteen years of age, and of night-work; also, for the safeguarding of the health of workmen; and for an international minimum wage and a workday of eight hours.

Discussion of the question was continued in 1885 by Mr. Vaillant before the Municipal Council of Paris. He contended that the means of combatting an international evil ought to be international; that the utility of general laws, already recognized to some degree by treaties of commerce, should be recognized in labor regulation; that each country can supplement international regulation by particular laws adapted to the various phases of moral, material, and industrial development peculiar to itself; tht the essential elements of international law, demanded by representatives of the proletariat of all nations, have for a long time been recognized; and that as no country can object to international legislation involving no injury to its relative economic power, so no employers' selfishness can set itself in opposition, since in this question the interests of the laboring class and of the capitalistic class coincide, reaping mutual advantage from the decrease of industrial crises and the enhanced stability of commerce. In consequence there was formulated in the name of the Municipal Council of Paris a *voeu* praying that negotiations be instituted by the French Government as promptly as possible with a view to establish international labor regulation. In recognizing that under an international agreement conditions best regulated locally may remain undisturbed, Vaillant makes a point for the failure to appreciate which, many opponents of the movement, *e.g.*, Mr. Leroy-Beaulieu,[12] have seriously erred in their reason-

[12] See L. Chatelain, *La Protection internationale ouvrière*, p. 153-158.

ing. It is of course primarily those phases of industry involved in international competition that are to be subjected to international control.

In December, 1885, a representative group of Frenchmen placed before the bureau of the Chamber a bill indicating by its terms willingness on the part of the French Government to comply with the overtures of the Swiss Government concerning international labor legislation, and readiness to assume the initiative, in concert with Switzerland, in endeavoring to bring about international law that would have for its aim the abolition of child labor under the age of fourteen, the limitation of the work of women and minors, measures of hygiene and safety, accident insurance, inspection, a normal workday, weekly rest, and an international bureau of labor statistics. One and one-half decades were yet to elapse before the establishment of an extralegal bureau of the kind proposed, and even a longer time ere the advent of the accident insurance treaties that now prevail.

While these matters were occupying attention in France, a noted personage had proceeded to act as a damper to the movement in the German Empire. A proposal in favor of protecting labor internationally, made in the Reichstag in January, 1885, aroused Bismarck to the utterance of a disquisition upon the subject. "Impracticable" recapitulates in a word his conclusion. Members of the Socialist Democratic Party retaliated in the succeeding year. Through the medium of a portion of this Party, a plan was set on foot to have the Reichstag adopt a resolution asking that the Chancellor of the Empire convoke a conference of principal industrial States for the purpose of formulating the uniform basis of an international protective labor agreement. The legal establishment of a ten-hour workday, and the suppression of night-work and of the work of children under fourteen, were the particular measures preconized. The resolution precipitated a heated discussion which served the mission of a publicity campaign, and in conjunction with a notable publica-

tion of that period resulted in a repercussion of public opinion in favor of the movement.

That publication was the work of Dr. Georg Adler, fellow of the University of Freiburg, and was entitled: "Die Frage des Internationalen Arbeiterschutzes." The evils cited by this advocate of international regulation included female and child labor in factories; undue length of the workday; excessive assessments upon the wages of unskilled laborers; unemployment, incompetence, and disability due to accidents for which employers cannot legally be held responsible and also due to disease; premature and necessitous old age; and the sordid and unhealthy homes of workmen. In general, Dr. Adler would favor a method of prohibiting the work of children under thirteen so as not to conflict with a proper degree of schooling or professional training; a ten-hour workday for adults; cessation of work at night, with exceptions; a maximum workday of from five and one-half to six hours for young people from thirteen to sixteen years of age and for married women, which would be productive of the system known as "half-time," by which one shift of such persons is employed in the forenoon and the other in the afternoon exclusively; a maximum workday of ten hours for all young people from thirteen to sixteen years of age employed in domestic industry; inhibition of labor on Sunday with exceptions, and also in certain occupations dangerous to health, and especially of the employment of young people or females in enterprises inimical to their health and morals; and finally for backward countries, a period of transition of a dozen years if need be, for the attainment of the standards set.

Shortly after the appearance of Dr. Adler's work, Prof. Lujo Brentano of the University of Leipzig published an article upon "The International Regulation of Industry." He inquired into the effects of factory legislation upon national industrial competition, discovering, in answer, a resultant moral and physical regeneration of laborers, an increase in wages, an improvement in

their ability and the general quality of their work compensating in part at least for whatever diminution of production may be attendant upon such regulation. In inquiring into the degree of uniformity possible in labor regulation between different industrial countries, he finds that it is possible only so far as the diversity of conditions of production, including climate, situation, peculiarities of social or industrial organization, financial resources, *etc.*, of the competing countries permits. In his opinion diplomatic pressure can be usefully exercised only to induce each country to pass national factory legislation compatible with its concrete conditions of production, thus preserving its capacity for competition, but, in defense of the employee, precluding excessive competition with the industries of other countries. For the enforcement of labor laws hypothecated in this plan, he suggests the device of adding to commercial treaties a clause making the enjoyment of their advantages conditional upon the faithful observance of the agreements entered into relative to factory legislation. The *prima facie* impracticability, or at best inferiority, of such a scheme, as compared with methods at present in operation, ought to make unnecessary any comment.

The 23d of August, 1886, an international labor congress, convened at Paris to debate the problems of a normal workday, adopted a resolution urging the workers of the different countries to invite their governments to concert the solution of labor's difficulties through international conventions. At the Congress of Montluçon in 1887, the trade unions of France voted to invite the Government to treat with other powers for international labor legislation. In Switzeralnd in the same year Messrs. Descurtins and Favon preferred a motion[18] before the bureau of the National Council taking into consideration the fact that a great number of states either had or were in the process of acquiring labor legislation similar to that of Switzerland, and consequently inviting the Federal Council to establish intercourse with those states

[18] *A.d.* t. XXXVI. 1890, p. 46.

relative to the conclusion of treaties or conventions on the protection of minors, the limitation of the work of women, weekly rest and the normal workday. There was little expectation that such action on the part of the Federal Council at that time would produce immediate tangible results other than the exploitation of the subject in the limelight of European public opinion, but even that was considered to be worth while. In 1888 the Federal Council gave its official countenance to the proposition and declared its intention of presenting at some future date to the States of Europe, in place of a general memorial, a concrete and detailed program. It hoped to realize in part at least the measures recommended in the motion, to which it wished to add the regulation of relations between employers and employees and of hygienic conditions in factories. Any attempt to obtain an international workday was characterized as impracticable for the time being. Attention was also directed to the fact that the subject of labor control was not one merely between governments, but one in which the populations of the States concerned had a direct interest and one which would be either advanced or impeded in proportion as these populations co-operated for the success of the movement or failed to do so. In further elucidation of the motion the following points were designated by special report as fundamental to the conclusion of a satisfactory international convention, *viz.*: the determination of a minimum age limit for children working in factories and mines, the prohibition of the night-work of women and minors, of the work of women in certain unhealthy and dangerous industries, of Sunday work, and of the maximum workday for minors. The establishment of a central international office to transmit information with reference to the enforcement of international conventions was also advocated by this report.

In 1889 the Federal Council addressed a Circular Note [14] to the governments of Europe recalling to mind its previous unsuccessful action in 1881, but now anticipating a more fruitful issue of

[14] *A.d.* 1889, t. XXX. p. 77-79.

its endeavors by reason of progress made in the supervening period of eight years. The question of concurrent labor legislation under an international compact was again broached. Recognition was given to the impossibility of the complete attainment of the ends in view by a single leap. As a beginning, it was thought that would be apropos. The convocation of an international conference to adjudicate upon such measures, drafted in advance for the sake of convenience, was recommended as a prerequisite to their incorporation into international conventions. Pursuant to the exchange of ratifications, such conventions would become valid to all intents and purposes as the international law of the powers concerned. It is noteworthy that fifteen years later this was substantially the procedure adopted for the creation of the Bern Conventions. The full program proposed in the Note contemplated the prohibition of Sunday labor, of the employment of young people and women in undertakings dangerous or particularly detrimental to health; the establishment of a minimum age for the admission of children into factories, and of a maximum day's work for young workers; the restriction of night-labor for young people and women; and the mode of executing the conventions concluded. This time Austria-Hungary, France, Luxemburg, Belgium, Holland, and Portugal were favorably inclined; Spain merely acknowledged receipt of the communication; the replies of England and Italy contained reservations; Russia frankly refused to participate, finding ground for excuse in the difficulty of uniform regulation of labor under the diversity of condions existent in different parts of the Empire. Germany, Denmark, Sweden, and Norway sent no reply.

Switzerland had intended to convene a conference if possible in September 1889, but in view of the replies to her Note, she decided to postpone it to the following year. She addressed another Note[15] to the ministers of the several powers previously approached, in which she reviewed the replies above cited and

[15] *A.d.* 1889. t. XXXI, p. 342.

gave notice of her intention to transmit a detailed program for the coming meeting, as far in advance as possible, to the powers interested. The program was later submitted in connection with a formal invitation to the conference which was to be non-diplomatic in character, and to be convened Monday, May 5, 1890, at three o'clock in the afternoon in the room of the Council of State of the Federal Palace at Bern, Switzerland. That program was conceived in the form of a long list of questions classified according to the topics already mentioned in a previous Note.

The same year (1889) saw (July 14) a socialist Congress at Paris where were presented resolutions prepared by an international conference held at The Hague, Feb. 28, 1889. The resolutions expressed approbation of the efforts of the Swiss Republic and enjoined the co-operation of the socialist parties and labor-organizations. The measures advocated the prohibition of the work of children under fourteen years of age, and of night-work in general; an eight-hour workday; hebdomadal rest; the conservation of health; an international minimum wage; a system of national and international inspectors chosen by labor and paid by the State to insure the enforcement of the above; and the extension of their supervision to home industry.

In the following August, the general Council of Bouches-du-Rhone adopted a resolution by which the French Government was invited to take the initiative in international legislation to establish a workday of eight hours.

On Feb. 25, 1890, the Swiss Republic, after its preparation of the long list of questions already alluded to, suddenly in a Circular Letter [16] cancelled the international conference which was to be held at Bern and which was at last to crown with success a series of earnest and disappointing efforts extending over nearly a decade. When, after such an expenditure of time and trouble, the hard soil of international obduracy had at last become softened and it had become evident that the time was ripe to achieve

[16] *A.d.* 1890, t. XXXIII. p. 373-374.

the honor of bringing about an official international conference between the great powers of Europe to deal with the question of protecting labor by means of treaties, why did the sturdy Switzer suddenly forego the realization of his hopes? The two following rescripts [17] of the present German Emperor issued just twenty-one days (Feb. 4) before the sending of the Swiss Note of cancellation, intimate the reason for the abandonment of the project by Switzerland.

The first rescript addressed to Bismarck was as follows:

"I am resolved to lend a hand to the betterment of the condition of the German workers in proportion to my solicitude occasioned by the necessity of maintaining German industry in such a state that it can meet the competition of the international market and insure thereby its own existence and that of the workers as well. The decadence of German industry, by the loss of foreign outlets, would deprive of their means of subsistence not only employers but also their employees. The difficulties which oppose themselves to the betterment of the condition of our workers and which result from international competition can be, if not surmounted, at least diminished, in no other way than by the international agreement of the countries which dominate the international market.

"Being convinced that the other governments are equally animated with the desire of submitting to a common examination the tentative proposals on the subject concerning which international negotiations have been broached by the workers of these countries, I want my official representatives in France, England, Belgium, and Switzerland to find out whether the governments are disposed to enter into negotiations with us with the aim of bringing about an international agreement on the possibility of givng satisfaction to the needs and desires of the workers which have found expression in the strikes of late years and in other forms of unrest.

[17] *A.d.* 1890. t. XXXIII. p. 325-326.

"As soon as my proposal shall be accepted in principle, I charge ties have taken with a view to bettering the situation of the workers, while being very valuable and very successful, have not however completely sufficed for the task that I have set myself.

"Berlin, February 4, 1890.

"WILLIAM."

The second rescript to Messrs. Berlepsch and Maybach was as follows:

"In mounting the throne, I have made known my resolve to favor the development of our legislation in the direction given it by my late grandfather, who had assumed the task of protecting the less fortunate classes in the spirit of Christian morality.

"The measures that the legislative and administrative authorihave taken with a view to bettering the situation of the workers, while being very valuable and very successful, have not however completely sufficed for the task that I have set myself.

"It will be necessary in the first place to complete the legislation on workmen's insurance. Next we shall have to examine the provisions of the present law on the condition of factory workers in order to give satisfaction to their complaints and aspirations in so far as they are just. The examination of this law should proceed on the principle that it is one of the duties of the government to regulate the duration and nature of work in such manner that the health of the workers, the principles of morality, economic needs of workers and their aspirations toward equality before the law, may be safeguarded.

"In the interest of the maintenance of peace between employers and the working people, it would be advisable to make legal provision for the purpose of insuring the representation of workers by men enjoying their confidence and charged with the responsibility of regulating their common affairs and of defending their interests in the negotiations with employers and with government authorities.

"An institution of this kind will facilitate for workers the free

and peaceful expression of their desires and grievances. It will furnish to officials the means of keeping informed in a regular manner on the labor situation and of continuing in contact with the workers.

"I desire that in respect of the economic protection to be accorded laborers the mines of the State may become model institutions. As regards private mines, I desire that organized relations be established between my mining officials and these undertakings with a view to a supervision analagous to factory inspection.

"For the preliminary examination of these questions, I decree that the Council of State shall meet under my presidency and examine them, calling in competent persons whom I shall designate. I reserve to myself the appointment of these persons.

"Among the difficulties in regulating the condition of laborers in the way that I propose, the more considerable are those which result from the necessity of taking care of national industry in its competition with foreign industries. I have accordingly advised the Chancellor of the Empire to suggest to the Governments of the States whose industry with ours holds the universal market, the meeting of a conference to bring about an international regulation, fixing the limits of the work that can be required of laborers. The Chancellor of the Empire will forward copy of my rescript to your address.

"Berlin, February 4, 1890. WILLIAM."

Switzerland desired the success more than the honor of the first great international conference of a diplomatic character which would rivet the attention of the whole world upon the subject of international labor regulation. She acquiesced and cooperated in spite of the unexpected change of affairs which the above rescripts precipitated. Conseqently, as had been anticipated, the conference was held; but as had *not* been anticipated, it was held under the auspices of the German Government and at Berlin, of which more hereafter.

CHAPTER II

International Labor Conferences

After the appearance of Emperor William's rescripts, Bismarck proceeded to communicate to the western European powers, exclusive of Russia, Spain and Portugal, the last two of which were invited later, an invitation to send delegates to a labor conference at Berlin. The subject matter proposed for consideration referred to the work of women, children and young persons, Sunday labor, mining, and lastly the means best adapted to the execution of the measurers adopted. This program was notified to Pope Leo XIII. by Emperor William with the request that His Holiness lend his aid and sanction to the project. The Pope's reply [1] heartily endorsed the deliberations of a conference that might tend to relieve the condition of the worker, secure for him a Sabbath day's rest, and raise him above the exploitation of those who without respect to the dignity of his manhood, his morality or his home, treated him as a vile instrument.

Conference of Berlin, March 15-29, 1890

The famous Conference convened March 15, 1890, at two o'clock in the afternoon in the Palace of the Chancellor. Fourteen countries were officially represented: France, Germany, Austria-Hungary,[2] England, Holland, Spain, Switzerland, Nor-

[1] *A.d.* 1890. t. XXXV. p. 18-19.

[2] Austria and Hungary may be counted as separate States in respect of Labor Conferences and Conventions.

way, Sweden, Portugal, Denmark, Belgium, Italy and Luxemburg. The opening address of the session delivered by Baron Berlepsch,[3] German Minister of Commerce, envisaged the menace that had arisen from industrial competition and justified the attempt to realize an accord between the governments to obviate the common dangers of industrialism internationally unregulated. In the protocol finally adopted is to be found the result of the Convention's deliberations.[4] The proposals made therein were for the most part approved unanimously, otherwise by a majority.

As to the regulation of mines, it was held desirable gradually to make twelve years in southern countries and fourteen years in others, the age limit for the admission of children; to exclude the feminine sex entirely; to limit the length of a day's work amidst unhealthful environment impossible of improvement; to guarantee so far as possible the health and safety of miners and adequate state inspection of mines; to qualify as mining engineers only men of experience and duly attested competence; to render relations between operators and employees as direct as possible and conducive to mutual confidence and respect; to institute measures of relief and insurance against the consequences of disease, accident, old age, and death; and measures preventive of strikes. Voluntary direct negotiation between employers and employees was recommended as the preferable solution of industrial crises, with ultimate recourse in case of necessity to arbitration.

The desirability of the prohibition of Sunday labor was adhered to with certain exceptions, *e.g.*: undertakings demanding continuity of production, or furnishing articles of prime necessity and requiring daily manufacture, or in case of enterprises functioning in special seasons or dependent upon the irregular action of natural forces. It was recommended that for such cases the governments provide a common basis of regulation by international agreement; and for the laborers involved, the rule of one free Sunday every other week was suggested.

[3] *A.d.* 1890. t. XXXIV. p. 270-271.
[4] *A.d.* 1890. t. XXXV. p. 175-178.

The resolutions to protect children stood for the exclusion of the two sexes from industrial establishments until ten years of age in meridian countries and until twelve years old in all others, with certain educational requirements prerequisite to such labor. It was further held that under fourteen years of age they ought not to be allowed to work nights nor on Sundays; nor to exceed the limit of six hours of daily work, broken by a rest of at least one-half hour; nor to be admitted to unhealthful or dangerous occupations, save in exceptional cases where special protection is provided. The absolute prohibition of the night-work of children under fourteen has never been enacted by international agreement; but it was a provision of the conventions that seemed to be nearing realization in 1913. The same is true of the recommendation of the Berlin Conference with reference to the general prohibition of the night-work of young people under sixteen, and the establishment of a maximum ten-hour workday for them. In case of occupations particularly dangerous or injurious to health, as likewise in the matters of night, Sunday, and a maximum day's work, the conferees at Berlin directed special attention to the need of safeguarding the interests of boys from sixteen to eighteen years old. The night-work of girls and women was condemned, as it had been repeatedly in previous assemblies. An international Convention to this effect since 1906 is the monument to these efforts. The maximum workday recommended for females was to be of eleven hours' duration interrupted by a rest period of at least one and one-half hours. Among numerous international measures favored for the protection of health was one, not met with heretofore, decreeing that lying-in women should not be readmitted to work within four weeks after delivery.

A sufficient number of officials specially qualified, named by the government, and independent of employers and employees, constituted, according to the stipulations of the protocol, the proper machinery by which to superintend the execution of these

measures in each State, and to report upon labor conditions. The compilation of these reports and annual inter-communication of the same by the governments, together with relevant labor statistics, texts of legislative regulations and administrative decrees on the subject, etc., were also advocated.

The immediate result of the Conference of Berlin was disappointing; its real aim, unaccomplished. Like previous and less important congresses, it confined itself merely to the expression of views and desires; no definite international conventions were formulated, or, indeed, outlined. Detractors found in its deliberations further proof of the futility of the movement. But, however unsatisfactory were the results obtained and gloated over by opponents, the Conference was an index of the growing power of an ideal, and served to center attention upon it to an unprecedented degree. It was a step in advance and an important one.

Supervening Events

Before the next important Congress to consider the subject met, a period of seven years elapsed. In that interval, Switzerland returned to the task of crystallizing opinion in favor of the movement, seemingly taking heart from the fact of the Berlin Conference. Her National Council addressed to the Federal Council a review of the importance of that episode, the significance of Switzerland's role in the events leading up to it, and a historical exposition of the whole question with an optimistic forecast for the future.

In 1892 the Federal Council introduced, through diplomatic agents at Berlin and Vienna, the subject of an international agreement regulating the industry of mechanical embroidery. The move had been suggested and sanctioned by workers and employers of the industry, but it received a cold reception at the hands of the two powers approached and was dropped. In 1895 the

Federal Council was invited by the Federal Chambers to take up again with the powers the general question of international labor regulation, but the Council did not believe the time propitious for a new attempt. Its next step (1896) related to the possible establishment of an international bureau charged with gathering important labor statistics, the study and comparison of industrial legislation, and the dissemination of pertinent information. Features of labor law, similar, dissimilar, or worthy of imitation, might thus be borne home to state and interstate consciousness as in no other manner. The countries approached with this plan were: France, Denmark, Germany, Belgium, Sweden, England, Italy, Spain, Holland, Norway, Russia, and Austria. The replies in general gave plain inplication of reluctance or hostility; and so the project was given up for the time being.

Congress of Zurich, April 25, 1897

Then came the first international labor Congress of importance in which the United States of America was recognized as one of the powers represented. It was called by the Swiss Workingmen's Society and was held at Zurich in 1897, the other nations represented being Switzerland, Sweden, Holland, Spain, Luxemburg, Russia, Poland, Germany, England, Austria-Hungary, Belgium, Italy, and France. The program was similar in many respects to that of the Congress of Berlin and still further resembled this more famous predecessor by its failure to get beyond the stage of exchanging opinions and expressing views. But unlike the former, this congress was permeated with socialistic doctrines. Its resolutions declared for Sunday rest, an age limit for child labor fixed at fifteen, either a day of eight hours or a week of forty-four hours for women and an eight-hour day for adults in general. In the matter of inspection, it recommended that women inspectors be appointed for works giving

employment to that sex, and suggested that a special inspection corps might be instituted for agricultural enterprises employing machinery. Other resolutions were more radical and their character is easily recognized. They demanded that official recognition be tendered to the offices of labor organizations; that the right of employees of both sexes and all classes to organize be respected, with violation of the same made punishable; that universal suffrage, equal, direct, and secret, be introduced in electing to all representative bodies so as to enhance the real influence of the labor class in all parliaments; that active propaganda be carried on by trade unions and political organizations through such instrumentalities as conferences, publications, conventions, journals, and most important of all, the action of parliaments; and that international congresses be periodically organized to present to different parliaments concurrently proposals of the same law. The Congress importuned the Swiss Federal Council to reattempt the establishment of international legislation and further to prosecute its scheme of an international labor office; and at the same time evinced the fact that it is possible for radical Socialists and Catholics to make mutual concessions for the sake of harmony. Further than this it did not distinguish itself or the movement.

Congress of Brussels, September 27, 1897

The next conference of note assumed the title: Congress for International Labor Legislation. Many former delegates of the Berlin Conference were present. It could hardly be said, however, to be official in character, as the greater number of members came of their own accord without official or governmental sanction. Some governments sent delegates; Germany, Belgium and France led in respect of the number of such representatives. Like the platform prepared originally by the Swiss for the international conference projected by them and later abandoned to

give place to the Conference of Berlin, the order of the day was interrogatory in form. This program asked for information concerning the evolution and modification of labor legislation among the various countries subsequent to the Conference of Berlin, inquired the situation of the different industrial States with reference to certain resolutions of that Conference, and put various other questions as to whether international labor protection is possible and desirable, and if so, in what measure and under what form; what regulation if any, should obtain with reference to small industry and domestic industry; what would be the utility and propriety of the concurrent adoption by all industrial states of the regulations imposed upon dangerous industries by a share of them, and found salutary in effect; what the appropriate means of insuring the better execution of protective labor law, what should be the laws and duties of labor inspectors; and what, the desirability of establishing international reports between labor offices and the compilation of labor statistics international in scope.

That the preparation of such statistics would be of great utility seemed to be the universal sentiment of the delegates; but, although the establishment of an official international bureau for that purpose was advocated, there were some who opposed it in preferment of a private office. In consequence of this divergence of opinion, no decision was reached. The possibility of actual contemporary international regulation of labor seemed by tacit recognition to have suffered general preclusion from the minds of the conferees. It was given comparatively slight attention. The conference was nevertheless another link in a chain of events leading on to the positive realization of international labor law; it accorded a profound treatment to many of the questions in hand, and occasioned the production of a noteworthy monograph upon legislative principles in force, and centered the attention of economists of all parties upon international phases of the labor movement. It also evoked from Mr. Henrotte, Belgian Chief of Labor

Inspection, the proposal of the suppression of industrial poisons by international agreement, and the observation that a trial of such legislation might be conveniently made by the international prohibition of the use of white lead and white phosphorus.

After the session, some of the delegates, evidently not satisfied with the convention's work, appointed a committee of three to give to it some more practical result. This committee undertook to prepare the way for the establishment of an international labor association representative of all parties interested in the proper protection of labor, and for this purpose drafted statutes or a tentative constitution for such an organization. It also lent its aid to the collection of copies of protective labor laws and regulations in force, with the result that toward the close of 1898, appeared Volume I. of the Belgian publication, "L'Annuaire de la législation du travail," covering in French, the labor laws promulgated in the year 1897. Among the prominent supporters of this undertaking was Mr. Nyssens, Belgian Minister of Industry.,

In 1899 Baron Berlepsch to whom the proposed plan of an international association on labor legislation was familiar, met with economists and men of politics in Berlin to consider the proposition and examine the tentative constitution submitted by the committee. The statutes outlined were generally approved and twenty individuals were delegated to enter into relations with other nations for the creation of other committees in furtherance of the project.

The principles stated in this proposed constitution were closely adhered to in the organization of a labor section in France, which infused more life into the movement by summoning interested parties to another international labor Congress at the time of the Paris Exposition of 1900. In the same year, the French Minister of Commerce, Mr. Millerand, made an unsuccessful attempt

[1] E. B. I. (1-3), App. p. 150. (E. B.=*Bulletin of the International Labor Office.*)

to bring about with Belgium negotiations on labor legislation. The incident reveals the status of governmental co-operation in matters pertaining to labor at this stage of the movement.[5]

Congress of Paris July 25-29, 1900

The following States sent delegates to the Congress of Paris: Holland, Russia, Denmark, Spain, Hungary, Switzerland, the United States, Germany, England, Austria, Belgium, Mexico, Australia, and New Zealand.

The representative of Italy, Signor Luzzatti, uttered on this occasion a significent declaration [6] with reference to labor conditions in his country. Said he:

"I come from a country where industry is only just beginning to develop. I should be thankful if you could, by means of a *compellare intrare,* give us an impetus in the direction of progress. I should be thankful if you could give to Italian workmen by international legislation that protection which national legislation does not afford them.

"Decisive success can only be atained by way of international legislation. I have often urged the prohibition of night-work in cotton mills; the reply has always been: 'Willingly, but first let it be introduced in the neighboring states which compete with us. Try to bring it about by way of international legislation.'

"I feel no doubt that in future, together with, or indeed supplementary to, our commercial treaties, we shall have labor treaties. In such treaties, we shall include provisions tending to level up conditions of exchange.

"Finally, I feel I must give my opinion that all our attempts will remain lifeless if we are not capable of quickening them with the warmth of human solidarity. Especially in the realm of social questions one is continually constrained to think of the beautiful saying that really fruitful thoughts spring always from the heart."

These remarks found partial fulfillment in a pioneer labor treaty concluded between France and Italy four years later.

The work outlined for the Congress consisted of the considera-

[6] *Ibid.*

tion of four things: the legal limitation of the length of the workday; the prohibition of night-work; the inspection of labor; and the formation of a union or international association for the legal protection of labor. In the discussions it was denied that any expectation was entertained of realizing by international agreement a Utopia of complete unification of protective law; it was rather expected that greater and greater similarity of such laws would gradually evolve; in determination of a maximum workday, it was declared that the consensus of opinion of past congresses seemed to favor a period of eleven hours under condition of its gradual reduction to ten hours; night-work, with the usual reservations, was declared anathema; labor inspection was defined as an essential institution capable of further development with respect to the establishment of permanent relations between its corps in different countries, and of augmentation notably by the addition of penalties, the specialization of functions, and the inclusion of inspectors representative of the rank and file of labor.

The creation of an official international office was opposed as conducive to complications under the excessive burden of responsibility which would be imposed by the superintendence of political, industrial and commercial relations of international consequence; but a private office being deemed admissible and desirable, the matter was resolved in this latter sense by providing for the formation of the: "International Association for the Legal Protection of Labor." [7]

Thus at last, after twenty years of disappointing attempts to attain some practical result, there was conceived and brought forth a child worthy of the splendid cause whose name it bore—the International Association for the Legal Protection of Labor was born—destined to grow into the robust organization, which, through its International Labor Office and national sections, is

[7] The Association is frequently termed the "International Association for Labor Legislation."

to-day extending its influence to every quarter of the globe and is responsible more than any other agency for the strides which have been taken toward more effective international co-operation in control and protection of industrial workers. To a commission of six wise men was entrusted the task of carrying out the active organization of the new Association. The body had for its presiding office a Swiss delegate, Mr. Scherrer, lawyer and former president of the Congress of Zurich; his colleagues were Baron Barlepsch, and Messrs. Cauwès, of the Law Faculty of Paris; Phillippovich, of the University of Vienna; Toniolo, of the University of Pisa, and Mahaim, at the University of Liége.

The Association as it now stands is directed by a Bureau chosen by the Committee of delegates representing different national sections [8] which are wholly autonomous bodies organized in accordance with the desires of the nationals concerned and having their own separate programs. The only prerequisite to membership in the Association is adhesion to the principle of the legality and efficacy of intervention to regulate the relations of capital and labor. It has a permanent International Labor Office with a regular salaried staff at Basel, Switzerland. All reports and resolutions relating to social hygiene are prepared by its Permanent Council of Social Hygiene. Support is derived from contributions and voluntary state subventions.

The Constitution of the Association calls for the publication in French, German and English of a periodic review of labor legislation in all countries. The French and German publications date from the year 1902; the English, from 1906; they are respectively entitled: *Bulletin de l'office international du travail, Bulletin des Internationalen Arbeitsamtes,* and Bulletin of the International Labor Office. These Bulletins publish, either textually or in résumé, the laws in force relative to the protection of labor in general, and of women and children in particular. They also con-

[8] Each section has its own official title; thus the American Section is the "American Association for Labor Legislation."

tain historical expositions of these enactments as well as copies or digests of official reports and documents concerning their interpretation and execution. Here are to be found the facts, gleaned from all the industrial nations of the world, that make possible the effective comparative study of labor legislation so essential to all attempts to unify it. The Association summarizes its aims under five principal headings:

"1. To serve as a bond of union to all who believe in the necessity for Labor Legislation.

"2. To organize an International Labor Office.

"3. To facilitate the study of Labor Legislation in all countries, and to provide information on the subject.

"4. To promote International Agreements on questions relating to conditions of Labor.

"5. To organize International Congresses on Labor Legislation."

The work of this conference had direct and far-reaching consequences. In one country after another, national sections were quickly instituted. The section in Germany bore the title of "Society for Social Reform" and had as one of its principal aims the creation of an Imperial Labor Office. Local sections were established in Berlin, Leipzig, Dresden, and Hamburg. As for Austria, a section was organized in spite of the law prohibiting to societies international relations; while in France, Italy, Holland and Hungary, similar sections were also created. The one in Switzerland boasted two hundred and thirty-eight members; Belgium, on the other hand, had to make up in quality what she lacked in quantity. Her limited membership was co-optated so as to preserve the organization's character of political neutrality.

First Delegates' Meeting of the International Association. Basel, Sept. 27-28, 1901.

These sections, excepting that of Hungary, soon were represented at the inaugural meeting of the Association, known as the

"Constituent Assembly of the International Association for the Legal Protection of Labor." This conference proceeded to define the functions of the International Labor Office in contradistinction to those of the International Association, enumerating among the tasks primarily incumbent upon the former the scientific investigation and comparison of national legislative enactments and the solution of the various problems inherent in dangerous and unhealthful occupations, the night-work of women, and the use of poisons, especially lead and white phosphorus in manufacturing processes. But a few years later, the use of white phosphorus in the manufacture of matches was prohibited by international agreement. It was desired also that the Office pay special attention to employers' liability and methods of insurance against accidents and diseases, especially in their relation to imported labor. A careful study of the acts of these congresses reveals the fact that in their resolutions and discussions have been laid the foundations for every important labor law that has since been internationally enacted. The principle of the equal treatment of foreigners and citizens before the social insurance laws of a realm was destined to have a notable carer.

Another subject touched upon in the discussion of certain of the delegates and destined to assume larger proportions in later years, was that of regulating traffic in young Italian laborers, which was an evil particularly prevalent in France.

Second Delegates' Meeting, Cologne, Sept. 26-27, 1902.

The next year witnessed at Cologne the Second Delegates' Meeting of the Association. Forty-two delegates sent by seven national sections beside twenty-two official representatives of ten European powers, constituted an attendance that was very encouraging in contrast with the official representation accorded by only four powers in the year previous. The Assembly confined its labors chiefly to two topics; *i. e.*, the night-work of

women and the use of the poisons, white phosphorus and lead, in industry. The principal obstacle encountered in the diagnosis of the first question was the disagreement as to just what exceptions, if any, to the general prohibition of night-work to females were feasible. In disposing of this matter, the convention resorted to the expedient of appointing a commission to discover if possible by scientific analysis of the variant factors entering into that problem, the measures best adapted to the effective prohibition of such labor and the progressive suppression of exceptions to the same. Similar provision was made for the investigation of measures by which to abolish white phosphorus from industry and suppress, in so far as possible, the use of white lead. As a means to this end, it was resolved to bring pressure to bear upon state and local authorities for the elimination of the use of lead in establishments under their jurisdiction. In the following year occurred the publication of the investigations (Jena, Gustav Fischer) under the titles "Night-Work of Women in Industry" and "The Unwholesome Industries."

French and Italian delegates at the meeting entered into informal negotiations upon the subject of a Franco-Italian Labor Treaty,[9] but nothing was definitely decided in the matter at this time.

Commission Meeting at Basel, Sept. 9-11, 1903.

The commission to whom the task of making the above researches had been assigned, met for conference in Basel in 1903. In order to arrive at some real and practical outcome of the much mooted questions of twenty years concerning the night-work of women, it besought the Swiss Federal Council to invoke the nations to acquiescence and participation in another international conference whose aim it should be to see this evil put under the ban of effective international prohibition. This prohibition, in the mind of the committeemen, ought to find exception in case

[9] G. B.-*Bulletin des Internationalen Arbeitsamtes* Bd. III, S. x.

of such unavoidable exigencies as fire, flood, explosion, imminent or unexpected accident, or impending loss of perishable products such as fruit or fish. In dealing with the subject of industrial poisons, the commission made known to the Swiss Federal Council its desire to have it undertake the necessary diplomatic action to occasion an international conference before which might be laid the question of prohibiting by international convention the use of white phosphorus in the match industry. The regulation of the use of white lead and its compounds was deemed a subject also worthy of treatment by such a conference; moreover, it was held to be the place of the national sections to pursue energetically the elimination of the use of lead products in public and private painting works.

The response of the Federal Council to these overtures was cordial and now about fifteen years after the Berlin Conference, it proceeded to extend to the various powers an invitation for another international conference. Their reply was in general very favorable; and thus it came about that the Swiss Circular Letter of Dec. 30, 1904,[10] issued a summons that was destined to congregate behind closed doors the representatives of fifteen European countries for a nine days' consideration (May 8-17, 1905) of the international problems of labor. Several other notable events, however, occurred in 1904, before this conference, the date of which, it will be noticed, was set for the spring of the following year.

On April 15, 1904, France and Italy had signed the first of a series of treaties looking toward reciprocal protection of laborers of the one country within the territory of the other. The example thus set was so generally followed as to create in international diplomacy an important departure, which will receive extended treatment in a following chapter.

Third Delegates' Meeting, Basel, Sept. 26-27, 1904.

In the same year occurred the third general assembly of the

[10] *G. B.* Bd. III, S. 442.

International Association, convened at Basel, with eleven powers officially represented besides the usual delegations from national sections. The program presented five principal topics for consideration, *viz.*: the material and financial resources of the International Office; the prohibition of industrial poisons; the regulation of the night-work of women and young people; the relation of labor legislation to home labor; and lastly the problems of social insurance. The five questions were assigned to as many different committees, which proceeded to consider and report upon them.

The first committee reported a deficit in the treasury of the International Office, and asked new subsidies from the States to meet the need.

The committee on industrial poisons was elated over the fact that anonymous philanthropists had donated 25,000 francs as prize money to be distributed to those who in competition suggested the best methods of overcoming the dangers of lead poisoning. The committee maintained that the question should be studied with reference to each industrial group by which lead was used, *e. g.*: manufactures of lead colors, painting establishments, makers of certain electrical instruments, the polygraphic industry, plumbing, stone cutters, dyers, *etc.*, in order that there might be worked out for each group the restrictions, regulations, or prohibitions necessary to guard the well-being of the laborer. In the painting industry, for example, it urged severe measures to coerce in all instances possible, the substitution of less harmful materials for lead products. And finally, in concluding its resolutions, it recommended, as a preliminary measure for effective resistance to the employment of industrial poisons in general, a careful classification by experts of all such poisons upon the basis of the seriousness of the disease produced by each and the wide publicity of the list when completed.

The third committee did not fail to find in the theme of night-work of young people abundant material out of which to construct a laudable program of investigation.

The fourth committee desired each national section to study and report upon certain designated phases of the problems inherent in home labor and its relation to labor legislation. The subject of the investigation of home industries had been suggested at the meeting of the special commission in Basel the year before.

The fifth committee was charged with the examination of the topic of industrial or social insurance. The principles sanctioned by the assembly held that insurance law applicable in a given case ought to be that of the place of the undertaking giving employment, and that distinctions should not be drawn between beneficiaries of social insurance because of their nationality, domicile, or residence. The national sections were asked to furnish the Bureau, before the next general assembly of the Association, reports that would throw light upon the means of putting these principles into operation in each country, and internationally. The position taken by the conference upon this point is noteworthy. Here was bold adherence to the position that the topic of workmen's insurance and the right of the laborer to indemnity if incapacitated by accident, did not confine itself to the domain of private law and so by its very nature exclude itself from international treatment. The question of the equality of foreigners and citizens before insurance law had been for a long time a debated issue: the solution which it was gradually approaching is indicated by the fact that in this same year, 1904, Italy signed three treaties with as many governments, in each of which it was mutually agreed, in respect of accident insurance, to investigate the means of bringing into practice the reciprocal protection of citizens of one country working in territory of the other. That this principle is wholly susceptible of application has been amply proved since by a succession of treaties on the subject.

Before adjourning, the assembly extended to the sections an invitation to include among their studies a special investigation of the question of the limitation of the length of the workday.

Bern Conference, May 8-17, 1905.

In the month of May 1905, occurred the first of the two famous assemblages at Bern, in which a majority of the powers of Europe took practical steps toward the concurrent incorporation of labor law into international conventions. We mention the fact here merely in the chronological order, as a succeeding chapter is devoted to the epoch-making transactions of the assembly and that which was its sequel.

Seventeenth Miners' International Congress. June 5-8, 1906.

Apart from congresses proposedly convoked in behalf of the principle of international protection, the subject has been considered in the international meetings, too numerous for detailed discussion at present, which trade unions, philanthropic societies, political parties, and various other organizations, have been constantly holding. An important example is that furnished by the Seventeenth International Congress of Miners, held in London in 1906.[11] The delegates desired that pressure be brought to bear upon governments so as better to safeguard the life and limb of members of their vocation. Their resolutions indicated their numerous wants, which were in brief: mine inspectors chosen from among the workmen and paid by the State; the prohibition of female work, as well as that of children under fourteen, and of youths under sixteen in underground works; an eight-hour workday for underground operations; a minimum wage and the control of wages by the delivery to the miners of every colliery of a duplicate pay book; old-age pensions at fifty-five; the extension of workmen's insurance to provide unconditionally a sufficient allowance for incapacitated miners and likewise for heirs of workmen who have died.

[11] *E. B.* Vol 1, (4-8). pp. 229-230.

International Diplomatic Conference at Bern. Sept. 17-26, 1906.

Three months later there was held the second of the Bern Conferences, as a result of which the prohibition of the industrial night-work of women and the interdiction of the use of white phosphorus in the manufacture of matches were enacted into law by a large proportion of the nations of Europe and their dependencies throughout the world.

Fourth Delegates' Meeting. Geneva, Sept. 27-29, 1906.

It had now been two years since the International Association for the Legal Protection of Labor had held an official conference; it convened on Sept. 26, 1906, the fourth assembly of the series at Geneva with eighty-two delegates present and twelve nations officially represented. Since its last meeting four new national sections had been added, making a grand total of twelve such branches of the organization. The additions were:

(1) British Section established in 1904;
(2) American Section established in 1906;
(3) Danish Section established in 1906;
(4) Spanish Section established in 1906.

The financial status of the Association was found to be excellent, expenses being more than met by generous contributions and state subventions. Standing at the head in this respect, as in all phases of the movement, has been Switzerland, which in the years 1904-1907 contributed over seven thousand francs more than its nearest rival, Germany, and over fifteen thousand more than its next nearest rival, France. The following table indicates the amounts contributed by the various States within that time: [2]

[1a] See L. Chatelain, *La Protection internationale ouvrière, p.* 153-158.

	1904	1905	1906	1907	Total
	f.	*f.*	*f.*	*f.*	*f.*
Germany	7.386	7.374	9.800	10.000	34.560
Austria	3.000	3.125.65	3.122	5.000	14.247.65
Belgium	....	....	2.000	2.000	4.000
Denmark	....	....	687.29	700	1.387.29
United States	1.033.75	1.000	1.000	1.000	4.033.75
France	5.000	3.750	9.000	9.000	26.750
Hungary	....	4.716.98	3.000	3.000	10.716.98
Italy	1.000	2.000	2.000	2.000	7.000
Luxemburg	400	500	500	500	1.900
Norway	....	....	688.30	700	1.388.03
Holland	4.151.10	4.137.95	4.139.75	4.150	16.578.80
Sweden	....	....	4.035.20	1.000	5.035.20
Switzerland	10.000	10.000	9.999.70	12.000	41.999.70
Total	31.970.85	36.604.58	46.972.24	53.050	169.097.67

The sum of four thousand francs was voted to aid in the publication of an English version of the Bulletin of the International Labor Office. The subsidy was accorded for two years only and on condition that supplementary expense be met by the national sections. Since 1906 the English Bulletin has made its regular apppearance concurrently with the French and German editions.

The assembly followed the custom of dividing itself into sections, to each of which some special topic was assigned; the chief subjects designated for consideration were:

(1) Child labor.
(2) Industrial poisons.
(3) Night-work for young persons.
(4) Maximum duration of workday.
(5) Home work.
(6) Insurance.

The resolutions adopted by the meeting authorized the Bureau of the Association to tender thanks in the name of the Association to the various governments which signed the Bern Conventions, and to congratulate the Swiss Federal Council upon the notable

outcome of its efforts; they also called upon the sections to inform the Bureau as to the measures decreed in each country in execution of labor legislation, and recommended the issuance of a *questionnaire* by the Office to obtain information with which to elaborate a comparative report on the subject; moreover, both the Office and the sections were besought to undertake a similar task in the further investigation of the question of child labor.

Upon the topic of the night-work of young workers, the resolutions specified eight particular points: the general prohibition of such work to young persons under eighteen; its absolute prohibition up to the age of fourteen; exceptions above fourteen in cases of necessity; *e.g.*, in industries where materials are subject to deterioration and loss; its total prohibition in public-houses, hotels, and sales establishments; the provision for a minimum night's rest of eleven hours including in every case the hours from 10 p. m. to 5 a. m.; the permission to make certain reservations in accomplishing the transition from old to new regulations; the desirability of seeing the serious enforcement of inspection; the institution of a commission to investigate the ways and means of realizing the above and to report upon the same within two years, each section having the privilege to nominate two delegates for the commission and to designate such experts from among employers and employees as ought to assist in the deliberations. Of such nature were seven laudable propositions advanced with no suggestion of the means of their execution in evidence, save the eighth, which merely provided for the appointment of a commission further to investigate the matter—being "the substance of things hoped for and the evidence of things not seen." Nevertheless, faith wrought works in the matter as will appear later.

The maximum duration of the workday was deemed to be a subject upon which definite conclusions should be reached for the conservation of the physical well-being and proper moral standards of employees. As a means to this end and to be in a way

to pronounce upon the utility of international conventions upon the subject, the Bureau was called upon to institute inquiries upon the length of the workday and the effects realized by its reduction among different peoples.

With regard to home labor, the sections were urged to request measures of their governments with the aim of compelling employers to register home workers connected with their industry and to give precise information as to the scale of wages in operation. Means were then to be adopted to insure wide publicity to such information. The extension of labor inspection and social insurance to home work, the vigorous application of health regulations to unsanitary conditions in which such labor might be found to occur, the effective organization whenever needed of professional unions, social leagues of purchasers, *etc.* —were all measures recommended by the resolutions upon the topic. Further, the Bureau was charged to ascertain, in collaboration with a subordinate commission, the branches and the conditions in each country of industry in the home whose products entered into the competition of the world market, and the divisions of such industry most urgently demanding reform in respect of excessive length of the workday, especially for women and children, insufficient wages, periodic unemployment, and the want of insurance against sickness.

Upon the subject of industrial poisons, the Office was urged to facilitate the execution of the measures recommended at the third assembly of the Association, and to have the sections appoint specialists to make necessary inquiries and prepare, before Jan. 1, 1908, reports on better means of combatting lead poisoning in the manufacture and use of lead colors both in the ceramic and polygraphic industries. These reports were to be sent to the International Office. The national sections were further urged to report before March 1, 1908 on the prohibition of the use of lead colors, indicating for each country whether the interdiction had been pronounced by a law or by an administrative measure

and whether it applied only to public works or especially to private works, and also the consequences of such prohibition as well as the results which had been attained by the use of leadless colors. The Bureau was also to appoint a commission of three experts to make out, from the lists furnished by the experts whom the sections had appointed, a final list of the more important industrial poisons classified in the order of the seriousness of the malady they caused. This was in execution of a measure resolved at the assembly two years before; the whole question, aside from the Bern Conventions, seemed to stand just about where it had stood then.

The hope was expressed that the powers not adhering to the Bern Convention prohibiting the use of white phosphorus in the match industry would see their way clear to do so, and the sections were charged to labor with all their might for such prohibition.

The resolution on workmen's insurance stood upon the principle of the equality of foreigners and nationals before the law; the Association intimated its dependence upon the reports of the sections to ascertain to what degree it would be possible to realize this equality in insurance regulation by international agreement. It had already been partially realized by accident insurance treaties between Luxemburg and Belgium (April 15, 1905); France and Belgium (Feb. 21, 1906); France and Italy (June 9, 1906); France and Luxemburg (June 27, 1906); also in voluntary national enactments; *e.g.*, those of the German Federal Council under dates of 1901, 1905, and 1906. The formation of international treaties and conventions, the modification of existing law and the passage of new law, were advanced as possibilities to be duly considered and striven for in so far as they promoted the application of this principle: for its realization in national law would be a step toward its incorporation into international law. Reports were to be made by the sections at the next meeting upon various phases of the subject.

The information furnished the Association by the different national sections especially with respect to the enactment and execution of labor law in pursuance of international agreements, could, under the skillful manipulation of the Bureau, be made to partake of the nature of a sanction; such at least seemed to be the hope of the assembly. The Association did not believe the time had as yet come to launch more international conventions; for, not only had those just signed at Bern yet to be fully tried but the agitation of the foregoing problems had yet to become of sufficient extent and intensity to warrant such a step. The delegates were too wise to forget that history is replete with instances where through ill advised haste devotees have wrought the ruin of some noble cause they sought to serve. Besides, the ground needed to be more carefully prepared, the questions more thoroughly analyzed, the whole movement more genuinely popularized, to make secure and safe another great advance, like that of the Bern Conventions, toward the international regulation of industry and labor—a consummation, as deemed by many of its advocates, of vital import not only to national industrial peace, but also to the international peace of the world.

Results of the International Prize Contest Concerning Lead Poisoning.

Shortly after the adjournment of this assembly occurred the announcement of the results of the prize contest which had been inaugurated by virtue of the contribution by anonymous philanthropists of 25,000 francs to be awarded to those who should produce the best treatises upon the subject of the prevention and suppression of plumbism. Announcement of this contest had been made by the commission on industrial poisons at the third meeting of the Association (1904), and the conditions of competition had been published June 10, 1905. Altogether sixty-three monographs arrived at the Office, some of which proved to be worthy of wide circulation and made valuable contributions to the movement for overcoming the evils resulting

from the use of white lead and its compounds in industry. The decision of the judges did not award any prize to two works on the means of avoiding poisoning at the time of the treatment of mineral of lead or of minerals containing lead. It was proposed, however, to purchase a work entitled, *"Morgenstunde hat Gold im Munde."* Of a dozen works on the means of suppressing the dangers of lead in lead foundries, two were awarded prizes which together amounted to 12,500 francs. These treatises were entitled: *"Wo ein Wille ist, ist auch ein Weg,"* and *"L'homme n'est past fait pour l'industrie, mais au contraire, l'industrie pour l'homme."* The Office proposed the purchase of works on the subject carrying the titles: *"Gesundheit ist Reichtum,"* and *"Die Hygiene sei die Freundin des Gewerbes."* No prize was awarded to any of a dozen works on means of avoiding toxication in the chemical use of lead in the manufacture of lead colors, accumulators, ceruse, and in similar industries. Two works entitled: *"Quod felix faustum fortunatumque sit,"* and *"Die Humanitat ein Zug unseres Herzens,"* received a prize of 937 francs each, from out the number of eight or ten competitors, all of whom treated the general topic of preventing lead poisoning in the industries of whitewashing, painting, varnishing, *etc.* A prize of 1,250 francs went to a work entitled, *"Vae soli,"* and two other awards of 937 francs each, to two essays entitled *"Durch Nacht zum Licht,"* and *"Eile mit Weile."* These last three prize winners belonged to the category of dissertations which treated of preventive measures in establishments employing great quantities of lead or lead composition; *e.g.*, type foundries. Numerous other contributions were proposed for purchase or given honorable mention. In no case however, did the International Office assume responsibility for the suggestions made or conclusions reached by the authors; it did proceed to give publicity to such of their contributions as were deemed worthy and valuable.

International Congress on Unemployment. Milan, Oct. 1-2, 1906.

The first International Congress on Unemployment,[18] held at Milan, Italy, in 1906, undertook, as its main task, to devise means for rendering unemployment less acute, without attempting to do away with it altogether; and therefore, it omitted in its resolutions to deal with the primary causes of unemployment, and went on to enumerate the most important factors requisite to combat the evil, *e.g.*: the determination of standards by which to regulate hours of work, wages, and contracts of labor; the more equitable distribution of labor within different groups; greater co-operation among all forms of labor; and the application of the doctrine of intervention by state and local authorities. To facilitate such intervention, recommendations were made to require of all industries a periodic, statistical report of work and unemployment; to establish an international employment bureau and free public employment agencies in every center of population; to provide either optional or compulsory insurance against unemployment, supported by contributions from the State, employers, and workmen; to accord to labor ready access to credit, particularly for the co-operative acquisition of land; and to furnish, through local branches of the government, subsidies to employment bureaus established by workers. Of these resolutions, the one touching upon an international employment bureau was without doubt most worthy of immediate consideration and potentially capable of most far-reaching and helpful results. The scientific adjustment of the supply and demand of the labor market predicates immediate relief for all parties concerned; *i.e.*, the State overcharged with labor, employers undersupplied, and workingmen unemployed. An International Association on Unemployment was organized in 1910.

[18] *E. B.* I, (4-8), p. 322.

Eleventh International Conference on the Weekly Day of Rest. Milan, Oct. 29-31, 1906.

Another international assembly followed close upon the heels of the Congress on Unemployment. This Conference concerned itself with the topic of weekly cessation of toil, laying down, as of general obligation, the observance of Sunday as a day of rest.[14] This would include Sunday rest for newspaper employees, and fifty-two days of rest annually, falling on Sunday as often as possible, for post-office employees. For countries where such regulations do not exist, the following reforms were recommended: only one postal delivery on Sunday, excepting express deliveries; non-delivery of postal, collection, and payment instructions, legal documents, and bankruptcy notices, and postal packets (notification to be given consignees of the arrival of packets containing perishable goods or marked for immediate delivery, leaving it for them to call for such within prescribed post-office hours); and limitation of the opening of post offices on Sunday to two hours, preferably in the forenoon.

For telegraph, telephone and customs service, the resolutions stipulated a rest of sixty-five days per year for the staff, including thirty-nine Sundays or single days plus two vacations of thirteen consecutive days each; an international agreement permitting the sending of telegrams on Sunday only in special cases, with rates for either telegraphic or telephonic messages on that day made twice as high as on other days; and for occupiers of small offices, a salary sufficient to enable them to hire substitutes for a certain number of Sundays per year; and the adoption, for employees in general, of the principle of at least fifty-two free days annually, one-half of which fall on Sunday.

With reference to railway and merchant service, the last mentioned principle was advocated under the condition that single days of dominical rest would at least be made as numerous as

[14] *E. B.* I, (9-12) pp. 604-605; 612-615.

possible. As a means to Sunday rest, the authorities concerned in the different countries were invited to decree the closing of freight stations except for the delivery of live animals; the limitation of the number of freight trains to the necessary minimum and their operation only in pursuance of great pressure of traffic; no obligation on the part of transportation officials to deliver shipment (the consignees being notified and privileged to call for such consignments, especially if of perishable nature); the abrogation of all claims for non-delivery of goods on Sunday; the governmental designation of holidays to be reckoned in lieu of Sundays; the discontinuance of labor pertaining to workshops, street repairs, the construction of large tunnels, and other building operations, except in cases of emergency; the extension of the benefits of holidays, in so far as possible, to employees of the merchant service as well as to dock and harbor hands, even if ships are in port and suspension of their unloading is thereby necessitated.

One of the resolutions also called for Sunday rest in the army and navy to the degree that circumstances would permit, parades being scheduled for other days.

The Conference did not wish to be understood as limiting in any degree the general obligation of Sunday rest, although it dealt with the subject from the industrial standpoint particularly; but instead of thereby implying that its observance was to be made conterminous with the limits of industry or manual labor merely, it rather emphasized that such rest constituted an obligation coextensive with every class and order of society; at the same time, it did not fail to recognize that beyond this obligation were duties within which justifiable exceptions fell; to illustrate: in some instances Sunday rest might be impossible where weekly rest would be possible; *e.g.*, on Saturday; in such case, next to the obligation of providing Sunday rest would come the duty of providing for weekly Saturday rest, which, while constituting an exception to the principle of dominical rest, would nevertheless

be the next best thing to it, if not equally salutary; it was frankly recognized, however, that circumstances were bound to exist which would preclude any solution of this character, and would thus make necessary the invention of other equivalents of hebdomadal rest.

Third International Congress on the Cultivation of Rice. Pavia, Oct. 27-29, 1906.

At Pavia, Italy, at almost the same time, the Third International Congress on the Cultivation of Rice included in its resolutions the decision that joint committees representing capital and labor were necessary for the settlement of inevitable industrial conflicts. [15]

Second International Peace Conference at The Hague, August, 1907

In the course of the following year, the Portuguese Delegation at the Second International Peace Conference at The Hague proposed to replace Article Sixteen of the Hague Conventions with a new Article, by which, among other things, disputes with respect to the interpretation or application of international labor agreements would in all cases be subject to compulsory arbitration as a last resort; in other words, such agreements would be outside the purview of that section (Section 16A, of proposed article replacing Article 16) which in reality made each nation the final judge of what it would submit to arbitration, and which read as follows: ". . . it is the exclusive function of each contracting power to determine whether any difference which has arisen affects their essential interests or their independence and accordingly, whether such dispute is of such a nature that it is excluded from arbitration." [16] The proposal of the Delegation was not adopted.

[15] *E. B.* I, (9-12) p. 604.
[16] *E. B.* II, (3), p. 428. (See Scott. *The Hague Peace Conferences*, I,

As long as nations reserve the right on every question to determine whether or not it so affects their national interest or honor as to preclude its arbitration, the way is clear for them to find in every dispute elements that waive the obligation of arbitration; for there can be no difference of opinion important enough to make arbitration desirable that cannot be construed by one of the parties as a menace to its national interests or independence if it has the inclination to do so.[17] But unlike disputations in the realm of politics, labor contentions are not apt to be of a character intrinsically involving fine points of national honor. An agreement between nations to submit, when all other peaceable attempts fail, differences arising out of labor conventions to compulsory arbitration, would certainly be a notable step in advance. The arbitration would be rendered compulsory by the species of the agreement in dispute. Should an award of a tribunal on such a question be found to consign a nation to extinction, is it not reasonable to suppose that the victim would still find just as great opportunity to undertake means for self-preservation as would have been the case had it not submitted the matter to arbitration in the first place?

Fifth Delegates' Meeting. Lucerne, Sept. 28-30, 1908.

The Fifth Delegates' Meeting of the International Association was held at Lucerne. Its discussions continued and enlarged upon those of the previous meeting. The fact that its deliberations dwelt upon the prohibition of the night-work of young persons and the limitation of the day-work of women is significant since these principles were in a few years (1913) to form the basis of outlines for new international conventions. A new topic specifically introduced was that of recommending and

pp. 337, 349, 385.

[17] See J. B. Moore. The Peace Problem, *The Columbia University Quarterly*, Vol. XVIII, No. 3, June, 1916, pp. 222-223.

defining an eight-hour shift for workmen in coal mines. The succeeding assembly in 1910 dealt with the same matter and defined the length of such a shift as extending from the time when the first man left the surface to descend into the mine until the time when the first man completed his return to the surface at the conclusion of a day's work.

The resolutions drawn up at the previous meeting in 1906 on home-work were reaffirmed. The wretched conditions environing that work were attributed chiefly to the insufficient wages paid, and it was decided to study the question of the organization of committees on minimum wages or wages boards to solve the difficulty. The question of international negotiations with reference to the regulation of labor in the embroidery trade was also considered, as were the problems of suppressing the use of lead paint in interior finish and restricting the employment of lead glazes in the ceramic industry. Other matters that were discussed included the protection of workers in polygraphic trades and in caissons, the preparation of the list of industrial poisons, and the treatment of foreigners in case of accident. The resolutions on these subjects, on that of child labor and other topics, were confirmed in subsequent assemblies, whose resolutions summed up all of importance included in those of this assembly, added thereto and conduced to more practical results.

Between the years 1907-1909, the international movement seemed to lag. In the year 1906 it had reached a high-water mark, but thereafter practical results failed to follow in as rapid succession. Even the English Bulletin of the International Labor Office seemed to shrink. Signatories of the Bern Conventions were tardy in ratifying them. No important labor treaty was signed in the year 1908. By 1910 however, it had become evident that the Bern Conventions were going to be a success; and all phases of the movement received a vigorous treatment at the Sixth Delegates' Meeting held at Lugano in that year.

Sixth Delegates' Meeting. Lugano, Sept. 26-28, 1910.

Fourteen sections and twenty countries were represented, making an attendance of about one hundred and twenty persons. The delegates of the American Section were Dr. and Mrs. John B. Andrews, Prof. Farnam, Dr. L. K. Frankel, and Dr. Helen L. Sumner. Commissioner Charles P. Neill represented the Federal Government. From Canada there was present Hon. W. L. Mackenzie King, Minister of Labor.

The constitutions of two new sections in Sweden and Norway respectively were approved.

The usual procedure of separating into committees for the consideration of special topics was followed. The discussion of subjects introduced in former assemblies, related in part to industrial poisons, home work, the maximum workday, the principle of the equal treatment of foreigners and citizens in respect of social insurance, the methods of administering labor law, and child labor. Detailed codes regulating the hygienic conditions of work in ceramic industries, printing shops and type foundries and in caisson work, were adopted, together with resolutions advocating wage boards regulative of home work and similar to these provided by the British Act of 1910. The trade of machine-made embroidery where carried on as a home industry, received special attention in matters pertaining to the regulation of working hours. The most important steps taken related to measures for incorporating into international conventions the prohibition of night-work of young persons and a universal ten-hour standard by which to delimit their day work as well as that of women. A Conference to this end met in 1913. The American section was urged not to abate its efforts among the various states to bring about the passage of health and accident insurance laws without the discrimination against alien workers that had unfortunately occurred in state legislation. The International Office presented proofsheets of its first com-

parative report on measures adopted in European countries to enforce labor law. As for statutes on child labor, a commission was appointed to prepare a report on the comparative methods of executing the same in the several countries.

Topics newly introduced for consideration included labor holidays, the protection of railway employees and the prevention of accidents, and co-operation with the International Association on Unemployment and the Permanent Committee on Social Insurance. The question of the reduction of the usual twelve-hour day in continuous processes was made a subject for special investigation. At the next Delegates' Meeting in 1912, recommendations on the matter were precise and definite as the result of a confernce that had been held shortly before (June, 1912) in London by the commission appointed to investigate the subject. Mr. John Fitch was the American delegate at that conference.

Inasmuch as divers operate in foreign waters and on ships of foreign nations, their trade also was deemed a proper one for international regulation. Investigation of this possibility was provided for; but up to the time of the next meeting (1912), little progress had been made in the matter.

The national sections were to press the prohibition of the use of lead paint and colors in interior work. One consequence of this was that later the Swiss Federal Council was invited to issue a decree prohibiting the use of lead colors in such work, and also the regulation that in commerce all such colors should be plainly marked, "poisonous, containing lead." [18] The Council was further recommended to consider, in any regulations issued for the prevention of occupational diseases, the principles drawn up by the Association for the regulation of hygienic conditions in the ceramic industry, type foundries, printing works and work in caissons. While the Association had not thought that caisson work was a vocation sufficiently affected by international competition to render it a proper subject for international agreement,

[18] *E. B.* VI, (2) pp. 217-219.

it had nevertheless drawn up a series of regulations on the subject, of which it urged the adoption by individual States. The Council's reply was slightly tart, though not ungracious. It characterized efforts of this nature as meriting full recognition, and conducive to steady improvement of conditions in general; but it declared that international rivalry in the domain of the several measures recommended, was hardly important enough to give rise to international conventions. Then it reviewed various Swiss regulations in preventing of occupational diseases, not ignoring defects but at the same time making obvious the marked improvement of conditions in Switzerland, and observing a trifle sarcastically mayhap, that the more unfavorable conditions in other countries were hardly to be considered a fair criterion of the situation in Switzerland. The Council tersely affirmed that sufficient evidence had not as yet been adduced to prove the necessity of abolishing the use of lead colors.

Seventh Delegates' Meeting. Zurich, Sept. 10-12, 1912.

The resolutions of the Seventh Delegates' Meeting at Zurich covered twenty-eight topics. Among the first of these was an expression of welcome to a section newly founded in Finland, and approval of its constitution. The Bureau of the Association was instructed to co-operate with the two International Associations on Unemployment and Social Insurance respectively, and with the Bureau of the International Home Work Congress in promoting social reform. It is interesting to note that within September of this year the four International Associations convened at Zurich within a short time of one another and thus gave rise to what was known as "social week," (Sept. 6-12). Thanks were tendered by the Seventh Delegates' Meeting to the Spanish Government for having prohibited the night-work of women; also, to the Swiss Department of Industry for its intention to recommend to the Swiss Federal Council the convocation of a second international conference on labor legislation (which met in 1913);

to the Federal Government of the United States for prohibiting the importation and exportation of poisonous phosphorus matches and imposing a prohibitive tax; to the Government of Mexico for similar action; to the Governments of New Zealand and the Union of South Africa for adhering to the Bern Convention prohibiting the use of white phosphorus in the manufacture of matches; to the Hungarian Government for the enactment of the same prohibition; and to the authors of the official list of industrial poisons, so long (since 1904) the object of earnest desire, now completed and published in English, French, Italian, and Finnish. Plans were made for the appointment by the various governments of an international commission of statistical experts to elaborate the principle to be followed by the States in issuing their statistics and reports on labor legislation so as to make possible the publication every four years of a comparative report on the administration of labor law. The introduction in all industrial countries of the principle of the Saturday half-holiday, as a prerequisite to real Sunday rest, received emphatic endorsement. The delegates desired that for women workers and young persons it should be made the subjct of an international convention, and the subcommission collaborating on the principle of the maximum ten-hour workday, was instructed to consider this proposition as well and to report at the next associational Meeting.

Progress in the suppression of the use of lead colors in painting and interior decorating, resulting from the legislative action of several States, was noted with satisfaction. Further investigation of plumbism, especially in the polygraphic and ceramic industries, was contemplated with a view to its suppression, and to the conclusion, in the case of the ceramic business, of an international convention restricting the use of lead. The widespread recognition, in legislation on social insurance, of the principle of the equality of aliens and citizens, so faithfully advocated by previous conferences and now adopted by the legisla-

tion of many lands, including states of the American Union, and in many treaties, also proved very gratifying. Other principles favored in this connection were: the reduction of rates of insurance paid to foreigners as against that paid to citizens in proportion only to the State's contributions to the insurance fund; and ultimately the preclusion of all necessity for such discrimination by the conclusion of international treaties; the settlement of the claims of insured parties, whether principals or assigns,[19] whose residence is outside the country of insurance, by the payment of a lump sum or by the transfer of the capital value of the annuity to an institution of the recipient's domicile; and the insurance of foreigners even in case of only temporary sojourn within the country. As at the last conference, the American section was urged to press its exertions in securing in the various states of the Union suitable insurance laws against sickness and accident, not discriminating against foreign labor.

Further modes of procedure were defined in detail to subserve many other desirable ends among which may be mentioned: the eight-hour shift in continuous industry and the realization of the same, especially in steel works, through an international convention; the limitation, by the same means, of work in glass factories to fifty-six hours per week on an average; investigations relative to a hygienic working day in dangerous and unhealthy trades; the better protection of the interests of railroad employees, dock workers, miners, tunnel constructors, quarrymen, *etc.*, on an international basis; the abolition of the custom of exacting fines through deductions in wages as well as of the system of paying in kind or through tickets convertible at the employer's store, commonly known as "trucking"; the establishment of the principle of the refund of compulsory contributions made to pension or thrift funds, in case of the laborer's withdrawal from the engagement that entitled to such benefits; the

[19] In this essay the term "assign" is used to connote the "dependents," "survivors" or "parties entitled" of an insuree.

alleviation, especially through effective administration of minimum rates by wage boards, of the unsatisfactory lot of the home worker; the suppression among workers of ankylostomiasis, anthrax, and mercurial poisoning; proper precautions in handling ferrosilicon; the study of the best methods of compiling morbidity and mortality statistics in different countries so as to arrive at a basis upon which to publish uniform international statistics of mortality by trades; the regulation of home work in the manufacture of Swiss embroidery and the suppression of evils resulting from the invention and continuous operation of automatic embroidery machines in factories of Germany, Austria, Switzerland, France, the United States, Italy, and Russia. These machines had been more widely put into operation since the last Delegates' Meeting and had injected a new factor into the embroidery problem.

Of the above, the subjects newly introduced as separate topics in the Association's program were: the Saturday half-holiday; the protection of dock workers; the truck system and deductions from wages; international statistics of morbidity and mortality among working classes; the handling of ferrosilicon; and the international prevention of anthrax amongst industrial workers and of mercurial poisoning in fur-cutting and hat-making.

The next Meeting of the Association was scheduled for Bern in 1914, a meeting which failed to anticipate the war and which, it is therefore not surprising to remark, was never held.

Conference of Bern. Sept. 13, 1913.

A special Conference at Bern preparatory to the creation of a new series of international conventions, held session in the fall of 1913. The conventions, needless to say, are still in suspense. The deliberations of the meeting receive attention in the following chapter entitled, Conventions Signed at Bern. Subsequent to this time little or nothing of importance has been accomplished in furtherance of such conventions.*

* At the first general meeting of the International High Commission of Pan American States, held at Buenos Aires, April 3-12, 1916, one of the topics discussed was that of international agreements on uniform labor legislation. See *House Document* No. 1788, pp. 5-6, 23-24, 64th *Congress, 2nd Session. Report of the International High Commission.*

CHAPTER III

CONVENTIONS SIGNED AT BERN

Conference of Bern. May 8-17, 1905.

In the spring of 1905, fifteen European States assembled their representatives behind closed doors at the Conference of Bern with the object of outlining international conventions to prohibit the use of white phosphorus in the manufacture of matches and also to interdict the night-work of women. The sessions were secret, in deference to the earnest solicitation of British delegates, and not because of any fear in this instance lest the diplomats might have in mind the perpetration of acts of which to be ashamed. It was optional with the conferees to conclude conventions on the spot, reserving of course the exchange of ratifications to their governments; or to draft, under the scrutiny and approval of technical experts, tentative agreements, leaving it to the governments to transform the same into conventions by direct negotiations; or merely to draw up non-obligatory resolutions.[1] The second of these three courses of possible action was that unanimously adopted. It is interesting to note that even Belgium, whose representative at the Conference of Berlin (1890) had protested against the aim of giving practical effect to the resolutions there formulated, emphatically acceded to the action now proposed. Although the outlines of the agreements in view were prepared with the prospect of their probable revision, it

[1] *G. B.* Bd. IV, (1905) S. I.

was nevertheless understood that by their signatures the delegates pledged their governments to a decision on the matter of adhesion or non-adhesion, with the presumption in favor of their adhesion to, and international execution of, the principles subscribed. This presumption gained additional force from the fact that many governments had deputed to the Conference officials or parliamentarians of high rank and recognized predilection for the project of regulating labor by means of treaties. Therefore in the deliberations of this body there was something more at stake than the mere discussion of the "whys and wherefores" of the international regulation of labor, or the passage of a laudable *voeu* as a grand finale of the session; it was to make the original drafts [2] of labor conventions destined not only to become law in a majority of the nations of Europe as well as in many of their colonial possessions, but also the first international conventions ever executed [3] by a number of parties, for the avowed and sole purpose of internationally protecting labor.

The Conference divided into two committees for the tasks in hand. Considerable difficulty arose with regard to the abolition of white (yellow) phosphorus from industry, due to the competing interests of the different States. Neither of the two late belligerents in the Far East, Japan and Russia, being present, the participation of either of them in the proposed measures was entirely problematical, while at the same time it was recognized that any restriction of the employment of white phosphorus, exclusive of Japan, would cause serious prejudice to the trade of England, Hungary, and Norway. An agreement, however, was finally reached, by the articles of which it would become unlawful, after Dec. 31, 1910, to import (*introduire*), manufacture, or offer for sale matches containing white or, as the Ger-

[2] *G. B.* Bd. IV, pp. 1-2.

[3] In this essay the terms "execute" and "execution" in reference to treaties are not used to connote the act of "signing," but rather of "bringing into force."

mans termed it, yellow phosphorus; provided all the countries represented at the meeting, and also Japan, should adhere and deposit their record of ratification by Dec. 31, 1907, thereby agreeing to put the Convention into actual operation three years after that date, *viz.*, on Jan. 1, 1911. But in this connection the spokesman of the committee took pains to intimate that failure in the immediate fulfillment of certain of these conditions would not necessarily preclude the Convention's ultimate realization.

The States which refused to sign the phosphorus pact were Denmark, which observed the failure of such an attempt in certain of its possessions, and Norway, Sweden, and Great Britain. The States adhering were: Germany, Austria, Hungary, France, Spain, Belgium, Holland, Luxemburg, Italy, Portugal, and Switzerland.[4]

The agreement relative to the night-work of women did not yield to as concise and brief a statement as its contemporary. The first Article placed a sweeping interdiction upon industrial night-work for all women, debarring exceptions subjoined. The adoption of this measure presaged the advent of radical reform in legislation among many of the countries. Spain prohibited the night-work of females under the age of fourteen only; Luxemburg and Hungary, under sixteen; Denmark, Norway and Sweden under eighteen; Portugal and Belgium under twenty-one. Article one further designated as subject to this prohibition all industrial enterprises employing more than ten laborers, excluding such as engaged only members of the occupier's own immediate family. The quest for a satisfactory basis by which to delimit the application of the law was fraught with no little difficulty since great dissimilarity prevailed among the standards employed by different countries in reference to the work of women. Great Britain, France, and Holland prohibited the

[4] The following States had previously passed laws prohibiting or restricting the use of white phosphorus in the match industry: Germany (1903, but to take effect in 1907), France (1898), Holland (1901), Switzerland (1898), Denmark (1874).

night-work of the sex in large and small industries; in Belgium, generally speaking, the statutes forbade it to the young, which was likewise the basis of prohibition in Spain and Luxemburg; in Denmark, Italy, and Portugal, prohibitory law confined itself to establishments employing over five workers or using power-driven machinery; in Switzerland it applied to manufactories having more than five workers with power-driven machinery or with employees under eighteen years of age, or having more than ten workers without power-driven machinery; in Austria and Hungary, it involved establishments with more than twenty laborers, power-driven machinery, or with labor shifts, *etc.;* while in Germany, Norway, and Sweden, still other regulations obtained less definite but pertaining to enterprises possessed of the characteristics of large-scale industry. The committee, after reviewing this diversity in legislation, excluded from the scope of the agreement industries employing not more than ten laborers, on the grounds that such supplied the local market only, were not of international concern, and employed but a minor percentage of the feminine working population anyway. The use of power-driven machinery was found to offer no satisfactory basis of demarcation since the use of small motors and electrical devices had become so universal that the smallest industries and home shops would thereby become included in international regulation, while the number of female employees thereby protected would be negligible. Regulation of such small concerns was held to belong to the domain of the individual states. Having thus determined the size of the industrial enterprises comprehended, Article I next indicated the general categories of business contemplated by the term, "industrial enterprise," specifying as included therein, mines, quarries, and manufacturing establishments, to the exclusion of purely agricultural or commercial undertakings. The spokesman of the committee explained that the manufacture of raw sugar from beets would be classified as an industrial enterprise, while the hotel business on the other hand would be without the meaning of the regulation. The

precise delimitation, however, of these categories is left to the legislation of each State.

Article II stipulated that the legal international night of rest for women was to be of eleven hours' duration, including in all cases the hours between 10 p.m. and 5 a.m. Switzerland had proposed an invariable period of rest extending from 8 p.m. to 6 a.m.; but fortunately the above device was hit upon for both rigidity and elasticity of regulation at one and the same time; the clause adopted leaves it to each nation to arrange certain of the hours of the international night to suit the convenience of its industry, while other hours, *viz.*, from 10 p.m. to 5 a.m., essential to the rest of the worker, are made determinate and obligatory in all countries irrespective of their industrial peculiarities. Thus concomitant and consistent with its rigidity and uniformity of regulation, the instrument leaves to each nation the option of fixing the international night between eight or more differing periods of time, namely, 6 p.m.-5 a.m.; 6½-5½; 7-6; 7½-6½; 8-7; 8½-7½; 9-8; 10-9. Moreover, eleven hours constitute merely the legal minimum; it is optional with each State to extend the period of rest if desired. This elasticity was designed to render the agreement applicable to all countries, whether of frigid or equatorial temperature; and when later at the Diplomatic Conference in 1906 it was transformed into a Convention, there were added provisions that made for its still greater adaptableness in this respect. It should be noted that these observations with reference to the outlines apply with equal force to this Convention, of which they were but the precursor and which subsequently became law between the nations.

The method just described of defining the international night was without precedent. In all the legislation of the States, such periods of uninterrupted rest had been established by stipulating the time from a definite evening hour to a definite morning hour; *e.g.*, two States had chosen the hour from 7 p.m. to 5 a.m.; six States, 8-6; one, 8½-5½; one, 8-5; four, 9-5; and one, 9-6.

The exceptions to the prohibition of women's night-work were provided for in Section 2 of Article II and in Articles III-V. For the sake of signatories having no law covering the night-work of adult females, the length of the night's rest could be limited to ten hours for a transitional period of three years, which would obviously be reckoned from the time of the Convention's execution, Jan. 1, 1911, and would consequently extend to Jan. 1, 1914.[5] Exemptions from the prohibition's operation might also be made in cases of extreme necessity, or when required to avert the otherwise inevitable loss of materials susceptible of rapid deterioration, while for industries subject to the influence of the seasons as well as for any industry under unusual circumstances, the length of nocturnal rest might be reduced to ten hours during sixty days in the year. Moreover, in providing for the deposition of ratifications not later than Dec. 31, 1907.[5] three years subsequent to which the Convention would come into force (Jan. 1, 1911),[5] it was stated that in so far as its terms applied to manufactories of raw beet sugar, wool combing and weaving establishments, or open works of mining operations suspended at least four months in the year on account of climatic conditions, the three-year interim between the deposition of ratifications and subsequent execution might be extended to ten years.

The signers of this draft convention were: Denmark, Austria, Hungary, Belgium, Germany, Italy, France, Spain, Luxemburg, Norway, Holland, Portugal, Switzerland. The representatives of Great Britain declared their lack of authority to sign but maintained that the British Government shared the sentiments which animated the Conference. Sweden's delegates similarly voiced the hope that the principles advocated by the Conference would succeed to adoption by their country, perhaps before the expiration of the time provided by the instrument. The United States was not represented in these deliberations.

[5] These dates were later changed.

In a Circular Note [6] of June 26, 1905, the Swiss Federal Council proposed to the powers the convocation of a diplomatic conference to enact the preceding tentative agreements into real Conventions. Under date of June 14, 1906,[7] another Circular Letter recorded the results of the proposal to the effect that favorable replies had been received from Germany, Austria, Hungary, France, Belgium, Denmark, Italy, Luxemburg, Switzerland and the Netherlands. Portugal and Sweden were ready to accede to the agreement that related to the work of women; Norway sympathizd with the movement, but was not ready to participate; the United Kingdom was ready to adhere to the prohibition of the night-work of women under certain conditions. In her conditions, England stipulated that all the States engaged in international competition should adhere; that the adhesion of other States, in which certain industries might develop, should be made possible; and that there should be a sufficient guarantee that the provisions of the Convention would be executed. Furthermore, the British Government asked that some conclusion be arrived at both with respect to the period during which the Convention should apply and the feasibility of instituting a standing commission to investigate alleged contraventions of the same as well as to propose whatever amendments chemical or mechanical inventions might make necessary from time to time. With reference to the interdiction of the use of white phosphorus the Government refused to express an opinion.

On June 12, 1906, Mr. Sarrien of the French Cabinet known by his name referred to the Bern Conventions in the following language: [8]

"The conflicts between capital and labor are becoming daily

[6] *E. B.* I, (7-8) p. XXXII.
[7] *Ibid.*, pp. XXXII—XXXIII.
[8] L. Chatelain—*La Protection internationale ouvière*, pp. 5-6.

more frequent and more acute, they run the risk of affecting adversely the prosperity of commerce and industry, and we believe that it is time to study seriously the means of preventing their return. . . .

". . . Economic problems are playing every day a more important rôle in the equilibrium of the world, and certain social questions cannot be completely solved by international legislation without an international agreement.

". . . An initial step is being taken in this direction on the initiative of the Committee of the International Association for the Legal Protection of Labor. A Convention has been drafted with a view to insuring the prohibition of the industrial night-work of women, as well as the prohibition of the use of white phosphorus in the manufacture of matches. The 5th of last April we made known that the Republic would give its definite and unreserved adhesion to that Convention.

"We shall seek to extend by degrees the sphere of these international agreements on labor questions. Thus, in the social and economic sphere as in the domain of politics properly so-called, we shall hope to serve at the same time the cause of the internal peace of the Republic and that of universal peace."

The Swiss Note of June 14 fixed the date of the impending Conference for Sept. 17, and the place at Bern. Another Note, sent Sept. 4, announced that the Japanese Government would not participate. The Note also laid before the governments the proposal[9] of the British Secretary of Foreign Affairs for the establishment of a permanent International Commission whose task it should be to superintend the execution of International Labor Conventions in conjunction with such duties as the following:

1. To give opinions on disputed points and complaints;
2. To investigate and report facts in the case;
3. As a last resort in cases of dissension, to promote arbitral

[9] *E. B.* I, (7-8) pp. XXXIII; XXXV.

proceedings at the request of one of the High Contracting Parties;

4. To consider programs for conferences on industrial questions.

International Diplomatic Conference of Bern. Sept. 17-26, 1906.

The above proposal was unacceptable to Germany, Austria, Hungary, and Belgium, it being asserted that although representatives of particular countries would have expert knowledge of the systems peculiar to their country, nevertheless the other members of the commission could outvote them at pleasure in the adoption of measures of vital import to those systems and affecting them adversely; and that, besides, the proper method of settling disputed points would be to call further conferences.

Two Conventions [10] were signed on Sept. 26, 1906, by the plenipotentiaries of the contracting States, reserving ratification to their respective governments. The States signatory to the Convention for the Prohibition of the Night-Work of Women were: France, Spain, Germany, Austria, Hungary, the United Kingdom, Italy, Luxemburg, the Netherlands, Portugal, Denmark, Sweden, Switzerland, and Belgium. Denmark was to be allowed to postpone the deposit of her ratifications until the Danish Factory Act of April 11, 1901 should be revised during the autumn of 1910.[11] That Great Britain and Sweden were of the number is to be specially noted as they did not sign the draft agreement in the former Conference in 1905; while Norway, a signer of the agreement of 1905, was not among the signatories in 1906.

Nothing contemplated by the agreement of the previous year was excluded from the Convention; the latter did, however, amplify, add to, and make more precise the terms of its model. The first four articles of the two documents were practically identical. Article V was a departure; it evinced unwonted pains

[10] *E. B.* I, (4-8), pp. 273-276.

[11] *E. B.* I, (7-8) p. xxxiv.

on the part of the envoys to emphasize the obligations inherent in the Convention, declaring that it was incumbent upon each of the contracting parties to take the administrative measures necessary to insure on its territory the strict execution of the provisions. In addition to this, it stipulated a procedure that might be said to partake slightly of the nature of a sanction: the governments were to communicate to one another all laws and regulations upon the subject, then or thereafter in force, and to make periodic transfer of reports concerning their application. Thereby dereliction in the enforcement of the Convention could be readily apprehended by sister States whose joint diplomatic effort might avail to restore the delinquent to the path of rectitude.

Still further did the Convention outdo its archetype, when it came to specify the potential scope of its operations; for by Article VI, colonies, possessions, and protectorates could adhere when notification to that effect should be tendered the Swiss Federal Council by their metropolitan government. Also, sovereign powers outside of Europe were contemplated specifically in the provisions of Articles VII and IX. The aforesaid Articles endeavored to lend sufficient elasticity to the Convention to make it adaptable to peculiar circumstances and conditions that might otherwise preclude its application. For example, upon notifying the adhesion of colonies, possessions, or protectorates, the home government could except from the operation of the law such native works as did not admit of inspection; or, if conditions of climate or native population in dependencies, or States outside of Europe, were such as to make the international night untenable, the period of unbroken rest could be reduced below the established minimum of eleven hours on condition that ocmpensatory rest should be accorded during the day.

The date for closing the *procès-verbal* of the deposit of ratifications was extended from Dec. 31, 1907, to the same date in 1908, leaving an interval of two years instead of three before the time (Jan. 1, 1911) set for the Convention's execution. Non-

signatory States could declare their adhesion by an act addressed to the Swiss Federal Council, in which case, as also in case of a colony, possession, or protectorate, the interval before execution would be reckoned from the date of adhesion. No party to the Convention could lawfully denounce it within twelve years of the closing of its record of ratification, thus guaranteeing it a fair trial. Thereafter, it might be denounced from year to year, the revocation to take effect one year after it had been notified to the Swiss Federal Council by the proper authority.

The powers signing the second Convention respecting the prohibition of the importation, manufacture, or sale of matches containing white (yellow) phosphorus were: Switzerland, Denmark, France, Italy, Luxemburg, the Netherlands, and the German Empire. Italy in particular had much at stake in this move as she was one of the most important producers of matches. Five States which signed the agreement of 1905 failed to sign the Convention. These States were Austria and Hungary, excusing themselves because of the non-adhesion of Japan; Portugal, because in 1895 it had granted a match monopoly to last for thirty years; and Belgium, and Spain. Denmark had not signed the outlines, but now adhered to the Convention. Norway, Sweden, and the United Kingdom did not sign on either occasion, although the British delegates signified willingness to adhere if all the others did likewise. By the agreement of the year preceding, the execution of the phosphorus law had been made conditional upon the concurrence therein of all the States represented and Japan, but this condition was not attached to the Convention of 1906.

The same stipulation that found place in the other Convention in emphasis of the obligation rigidly to enforce the law enjoined thereby and mutually to report all official action germane to the matter, were added to this Convention by Article II; while, in further similarity to the first Convention, its sphere of application was so extended as to render possible the adhesion of colonies,

possessions, or protectorates, and States not then signatory. The ratifications of the co-signatory nations were to be deposited by Dec. 31, 1908, and the Convention was to come into force three years from that date (Jan. 1, 1912), while for non-signatory States and dependencies, a period of five years was to intervene between the time of notifying their adhesion and making good its execution. Also, the provisions for denunciation paralleled those of the first Convention, with the one exception that five years instead of twelve constituted the period within which it could not lawfully be abrogated by any one of the parties to it.

Into the Conference's deliberations relative to the first Convention, there had been injected a discussion of vital import to both, as well as to all such conventions that may ever be framed; it seemed to provoke no slight difference of opinion at the time and perturbed the Conference not a little. This concerned the institution of a sanction. English delegates advocated the adoption of the following most clearly defined sanction up to that time proposed for labor conventions signed by several governments.

"The High Contracting Parties agree upon the creation of a commmission charged with superintending the execution of the provisions of the present convention. That commission should be composed of delegates of the different contracting States. . . . The commission shall have the function of expressing opinion on litigious questions and complaints which shall be submitted to it. It shall have only the function of authentication and examination. It shall make on all the questions which shall be submitted to it, a report which shall be communicated to the States concerned. In the last resort, a question in litigation shall, on demand of one of the High Contracting Parties, be submitted to arbitration. In case the High Contracting Parties should be disposed to call conferences on the subject of the condition of laborers, the commission shall be charged with the discussion of

the program and shall serve as an organ for the exchange of preliminary views."[18]

But this seemed to some to risk the subversion of law and administrative powers of the State and to constitute an attack upon the principle of their sovereignty. Indeed, infinite wisdom and due diligence would certainly need to be exercised by a commission appointed to the stupendous task of ascertaining and investigating on an international scale the various industries in which women might be found to be employed at night in contravention of the law. This question of a proper sanction constitutes one of the most difficult and vital problems of the whole movement; for unless the uniform and effective enforcement of international law on labor can be realized, it is self-evident that it is foredoomed to failure. An attenuated *voeu* was finally signed by representatives of ten States for the institution of a commission of purely consultative character to which questions or disputed points might be referred and whose duty it would be to give opinions as to equivalent conditions pursuant to which there might be accepted the adhesions of states outside of Europe, as well as of possessions, colonies, protectorates, where the climate or condition of the natives would demand modifications of detail in the Convention. Such a commission might also serve as a medium for convening conferences. Nevertheless, the contracting States would have the right to submit questions to arbitration in conformity to Article 16 of The Hague Convention, even if the matter had previously been the object of an expression of opinion by the commission.

Results of the Bern Convention on Night-Work.

One month (Oct. 23, 1906) after the foregoing events, the Swiss Federal Government sent to the various powers duplicates of the Conventions signed at Bern, and called attention to the fact that the time allowed for depositing ratifications expired

[18] L. Chatelain, *op. cit.*, pp. 118-119.

Dec. 31, 1908,[13] and requested the governments to express their pleasure with reference to the establishment of the permanent international commission of supervisory powers that had been proposed over the signatures of ten States. The States have never seen fit to create such a commission. By an Act of August 3, 1907, the Government of Luxemburg was empowered to ratify and enforce the Bern Convention.[14] Hitherto employment in mines, open mining and quarries had been forbidden entirely to women, while girls under sixteen were not allowed employment at night in any industrial establishment at all; otherwise the night-work of women had not been prohibited; but now by adhesion to the Convention, the prohibition of night-work was extended to all women and the minimum night's rest which had been eight hours long was increased to eleven hours; thus, the ratification and enforcement of the Convention in Luxemburg marked a distinct advance in the protective legislation of that country, and serves to illustrate the character of reforms wrought among the signatory powers in general.

Although Great Britain had refused to sign either the agreement (1905) or the Convention (1906) on the subject of woman's work, it wheeled into line within the prescribed time limit (Dec. 31, 1908), accompanied by a most gratifying brood of dependencies. By an Act under date of August 9, 1907, the English Parliament repealed sections of the Factory and Workshop Act and of the Coal Mines Regulation Act of 1887, conflicting with the Bern Convention on night-work. Denmark, Spain, Italy and Sweden, not having deposited their ratifications before Dec. 31, 1908, entered into an agreement with the remaining signatory States by which these four nations gained the privilege, equally with those States that did not sign the Convention (see Article 9), to notify their adhesion at a subsequent date. Although for Denmark special exception had previously been made, she

[13] *E. B.* I, (9-12) p. lv.
[14] *Ibid.* II, (1) p. V.

never gave notice of adhesion. Nor has Spain ever ratified the Convention; but by an Act of July 11, 1912, she prohibited the night-work of married women and widows having children, in shops and factories after date of Jan. 14, 1914. As regards unmarried women and childless widows, the number of such employees is to be gradually reduced by 6% every year until Jan. 14, 1920; from this date the night-work of women is to be entirely prohibited. Under the special provision, Italy adhered by an Act addressed to the Swiss Federal Council Dec. 29, 1909, and Sweden similarly under date of Jan. 14, 1910. The Bill relating to Sweden's participation had been rejected by both Chambers of the Government in 1908, and again it was reported unfavorably by the Committee in 1909; but this time it was passed by both Chambers in spite of the Committee's adverse report.[15] The Acts of Sweden illustrate the manner in which exceptions legally may be taken to the Convention.[16] Two proclamations (June 9, and Aug. 11, 1911) allow exemptions in the preparation of preserved fruit and vegetables and in salting of herring, in pursuance of the Act (Nov. 20, 1909) prohibiting the night-work of women, which in conformity to the terms of the international Convention on the subject, empowers the government to make exceptions to such prohibition in the preparation of materials subject to rapid deterioration.

In a Circular Note[17] of March 19, 1909, the Swiss Federal Council put forward the proposal that the period of time provided for compliance with the terms of the Convention should be computed from Jan. 1, 1909 in the case of States which deposited their ratifications within the limit prescribed. This was to interfere in no way with the later adhesion of other parties; the proposition involved considerable correspondence[18] and not meet-

[15] *E. B.* V, (2) p. xvii.
[16] *E. B.* VI, (4) p. xlvii.
[17] *Ibid.*, V, (2) p. xi.
[18] *Ibid.*, V, (2) pp. xi.-xvii.

ing with the unanimous consent of the States, failed. The Belgian and French Governments suggested that the period of two years, at the immediate close of which the Convention was to be brought into force, should be reckoned from Jan. 14, 1910. On this date had occurred the adhesion of Sweden, the last of twelve States to ratify the instrument. The Federal Council interpreted the proposal as meaning also that the period of ten years reserved for sugar beet factories, woolen mills, *etc.* (See Art. 8) should extend from the same date, which would thus determine a uniform time for the Convention's execution by every one of the States that had ratified, in spite of previous irregularity in their adhesions. To this proposition, the Federal Council gave its assent (Note of April 9, 1910) [19] with the hope that it would be found acceptable by the States which were to be interviewed on the matter; *i.e.*, Germany, Austria, Hungary, Belgium, Denmark, Spain, France, the United Kingdom, Italy, Luxemburg, the Netherlands, Portugal, and Sweden. All except Spain and Denmark expressed approval, and thus it was decided that the Convention should go into operation Jan. 14, 1912 in the case of the dozen States which had adhered on or before Jan. 14, 1910.[20]

This Convention prohibiting night-work to women has been adhered to by the following countries and colonies:

Country	Date of Adhesion	Date of Coming into Force
	Within prescribed time	
Germany	limit Dec. 31, 1908.	14th Jan. 1912
Austria	"	"
Hungary	"	"
Belgium	"	"
France	"	"
The United Kingdom	"	"

[19] *Ibid.*, V, (2) pp. xiv-xvii.
[20] *Ibid.*, V, (3) pp. l-li.

Luxemburg	"	"
The Netherlands	"	"
Portugal	"	"
Switzerland	"	"

French Colonies

Algeria	26th Mar. 1909	14th Jan. 1912
Tunis	15th Jan. 1910	15th Jan. 1912

British Colonies

Ceylon	21st Feb. 1908	14th Jan. 1912
Fiji Islands	"	"
Gibraltar	"	"
Gold Coast	"	"
Leeward Islands	"	"
New Zealand	"	"
Northern Nigeria	"	"
Trinidad	"	"
Uganda Protectorate	"	"
Italy	29th Dec. 1909	"
Sweden	14th Jan. 1910	"

Spain has not notified her adhesion to the Convention, but has nevertheless prohibited the night-work of women. Greece passed a law by which the prohibition of the night-work of women was decreed on 24th Jan./16th Feb., 1912, satisfying in all respects the conditions of the Bern Convention, although Greece is not a party to it. Night-work was forbidden to women in Japan and India in 1911, but in the former State the regulation applies only to establishments with more than fifteen workers and the night's rest need be only of six hours' duration, while in India the law does not in general apply to establishments which do

not employ more than forty-nine persons at any time of the year.

In 1905 the prohibition or lack of prohibition of the night-work of women stood as follows.[21]

1. States without prohibition: Japan. (Estimated number of unprotected female employees: 250,000.)

2. Night-work allowed on a basis similar to the regulations governing day-work: South Australia, California, Illinois, Louisiana, Maine, Maryland, Michigan, Minnesota, New Hampshire, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Virginia. (Unprotected females over sixteen years of age in the United States: 227,000.)

3. Limitation of the day-work of women to eleven hours and the night-work of girls between fourteen and sixteen to eight hours: Spain.

4. Prohibition of night-work to young persons only: Belgium, Portugal, Denmark, Sweden, Finland, Norway, New South Wales, Hungary, Luxemburg, Ohio, Georgia, Wisconsin. (Estimated number of unprotected female employees in the above States: 350,000.)

5. Night-work of women prohibited in certain kinds of occupations: (a) Mines and textile industries: Russia. (b) factories, mines, blast furnaces: Austria (countries represented in Reichsrat), East Indies (for establishments employing over 50), Luxemburg, Finland, Sweden. (c) factories, mines, blast furnaces and shops with motor power: Germany, Switzerland (for establishments employing over five workers).

6. Prohibition of night-work of females in establishments without motor power but which employ over:

5 laborers: Denmark, Portugal, Ontario.
4 laborers: Victoria.
3 laborers: Canton Bale-Ville.
2 laborers: Queensland, New Zealand, Cantons of St. Gall and Glarus.

[21] *Publications de l'Association internationale pour la protection légale des travailleurs.* No. 4. p. 6 *et suiv.*

1 laborer: Cantons of Zurich, Bern, Lucerne, Soleure, Argovie, Neuchatel.

7. Prohibition of the night-work of women in principle, subject to exceptions: Great Britain, Switzerland, Germany, France, Holland, Austria, Russia, Italy (beginning with 1907), Manitoba, Quebec, Nova-Scotia, Queensland, Victoria, New Zealand, East Indies, New York, New Jersey, India, Massachusetts, Nebraska.

8. Extension of the principle of the prohibition of the night-work of women to home industry: Holland.

The following are at the present time non-signatory States in respect of the Bern Convention on woman's work: [22]

1. Europe: Denmark, Greece, Lichtenstein, Monaco, Norway Roumania, Russia, Finland, and all the Balkan States.

2. Africa: Abyssinia, Congo, Egypt, The South African Union, Rhodesia, Bechuanaland, Swaziland, Zanzibar, Liberia, the German and Portuguese Colonies, Madagascar, Morocco, Reunion, Senegal.

3. Asia: All States and Colonies with the exception of Ceylon.

4. America: All States excepting Trinidad and the Leeward Islands.

5. Australia and Polynesia: All States excepting New Zealand and Fiji.

Results of the Convention Prohibiting the Use of White Phosphorus.

For the six States which deposited their ratifications within the prescribed term and without reservation the time fixed for the execution of the Convention was Jan. 1, 1912. Italy alone of the seven signatories failed in this respect but she was allowed to adhere later. Although Great Britain had not signed the Convention at Bern, she gave notice of adhesion Dec. 28, 1908, and so completed atonement for seeming obstinacy with reference to the agreements and Conventions signed by other powers at Bern

[22] *Publications of International Labor Office.* No. 8, p. 85.

in preceding years. We may forgive England; but what about the States who said: "I go" and "went not"?

The following have subscribed to the Convention prohibiting the use of white (yellow) phosphorus in the manufacture of matches.

Country	Date of Adhesion	Date of Coming into Force
	Within prescribed time	
Germany	limit Dec. 31, 1908	1st Jan. 1912
Denmark including Faroe Islands and Danish Antilles	"	"
France	"	"
Luxemburg	limit Dec. 31, 1908.	14th Jan. 1912
The Netherlands	"	"
Switzerland	"	"
French Colonies		
Somali Coast	26 Nov. 1909	26 Nov. 1914
Réunion	"	"
Madagascar and Dependencies	"	"
French West Africa	"	"
Settlements in Oceania	"	"
New Caledonia	"	"
Tunis	15 Jan. 1910	15 Jan. 1915
Great Britain and Ireland	28 Dec. 1908	28 Dec. 1913
British Colonies		
Orange River Colony	3 May, 1909	3 May, 1914
Cyprus	4 Jan. 1910	4 Jan. 1915
East Africa Protectorate	"	"
Gibraltar	"	"
Malta	"	"
Mauritius	"	"
Seychelles	"	"
Southern Nigeria	"	"
Uganda Protectorate	"	"

Northern Nigeria	24 Feb. 1910	24 Feb. 1915
Leeward Islands	26 Mar. 1910	26 Mar. 1915
Virgin Islands		
St. Christopher & Nerio		
Montserrat		
Dominica		
Antigua		
Fiji Islands	20 June 1910	20 June 1915
Gambia	22 Oct. 1910	22 Oct. 1915
Gold Coast	"	"
Sierra Leone	"	"
	Retrospectively from	
Union of South Africa	3 May 1909	3 May 1914
Canada	20 Sept. 1914	20 Sept. 1919
Bermuda	19 Dec. 1910	19 Dec. 1915
Southern Rodesia	20 Feb. 1911	20 Feb. 1916
New Zealand	27 Nov. 1911	27 Nov. 1916
Italy	6 July 1910	6 July 1915
Dutch Indies	7 Mar. 1910	7 Mar. 1915
Spain	29 Oct. 1909	29 Oct. 1914
Norway	10 July 1914	10 July 1919

The manufacture and sale of white phosphorus matches has been prohibited in Victoria, Western Australia, Tasmania and New South Wales. The United States has placed a prohibitive tax on such matches and prohibited their importation and exportation.

The following are countries permitting the manufacture of phosphorus matches.[28]

1. Free manufacture (a) in Europe: Belgium, Russia (subject to a differential tax on white phosphorus), Sweden (prohibition of their sale in Sweden), Turkey; (b) outside Europe: all Asiatic States (with the exception of Cyprus and the Dutch and East Indies), America (with the exception of the United States, Can-

[28] *Publication of the International Labor Office.* No. 8 p. 87.

ada, the Danish and British Antilles, and Mexico), Abyssinia, Egypt, Zanzibar.

2. Countries with State monopoly: Bulgaria, Greece, Portugal, Roumania, (State monopoly, but with use of sesquisulphide), Servia.

Of the above only Japan and Sweden are of importance as exporting countries.

In answer to a Swiss Circular Letter (July 17, 1911) asking whether the importation of sample matches made with white phosphorus should be forbidden the replies were as follows:[24]

Affimative.
Great Britain
Italy
Denmark
France
Spain

Negative.
Germany
The Netherlands
Luxemburg

This appears to be a quibble hardly worthy, in the light of the terms of the Convention, of the three powers negatively inclined. But it is a fair example of those differences of opinion which make the questions of interpretation and sanction such intricate and vital problems in international law. Is the word *introduction* in the French version of the Convention merely to be interpreted as "introduction" for industrial purposes rather than in the strict sense of "importation," and consequently is the importation of sample phosphorus matches to be condemned? It would be interesting to understand the object of importing sample cases of phorphorus matches whose "introduction," "manufacture" and "sale" within the realm is forbidden.

[24] *E. B.* VII, (1-2) p. 1-4.

Bern Conference. Sept. 15-25, 1913.

Delegates to the sixth biennial meeting of the International Association for Labor Legislation, held at Lugano, Switzerland, in 1910, undertook measures to prepare the way for a second series of international conferences to draft international conventions prohibiting the night-work of young persons entirely, and also the day-work of women and of young persons in excess of ten hours. This led to the preparation by the Bureau of a program to serve in case a conference should be called to outline such agreements; and by a Swiss Circular Letter of Jan. 31, 1913,[25] this program was submitted to the States invited to support the project; *viz.*, Germany, Austria, Hungary, Belgium, Bulgaria, Denmark, Spain, France, Great Britain, Greece, Italy, Luxemburg, Norway, the Netherlands, Portugal, Roumania, Russia, Servia, Sweden. In consequence, delegates from the above States, with the exception of Servia, Roumania, Luxemburg, Greece, and Bulgaria, assembled with the representatives of Switzerland at Bern, Sept. 15, 1913.

The tentative agreements intended to be later transformed into conventions by an international Diplomatic Conference, in conformity to the precedent set by the Bern Conventions of 1906, followed in general the program worked out by the Bureau; but varied from it in a number of respects by reason of both additions and subtractions. The first agreement prohibiting night-work to young persons, received the signatures of delegates from Switzerland, Sweden, Portugal, Holland, Norway, Italy, the United Kingdom, Germany, France, Spain, Belgium, Hungary, and Austria. According to the principles that were adopted and made applicable to all concerns where more than ten persons were employed, the prohibition was to be general for employees under sixteen years of age, and absolute for all under fourteen. Industrial undertakings were defined in the same sense as industrial enterprises in the Bern Convention respecting the work of women,

[25] *E. B.* VIII, (3-4) 1913 pp. 103-106.

and the night of rest prescribed for young workers was also to be the same as the international night of eleven hours fixed by that Convention. Certain exceptions to this last rule, however, were allowed for coal and lignite mines and bakeries, also, for colonies, possessions, protectorates, or extra-European countries, where climate or conditions of native population might require a different regulation; but in all such cases the shortening of the night was to be compensated by rest in the daytime. Moreover, work during the night by individuals over fourteen years of age might be allowed when public interest demanded it, or in case of *force majeure* where there occurs an interruption in business impossible to foresee and non-periodic in character. In so far as this agreement might be found to afford better protection to girls under sixteen, it was to supercede the Convention of 1906 on night-work. Two years after the closing of the record of deposit, the proposed convention was to come into force, with the exception that its execution might be delayed for ten years in respect of employees over fourteen years of age in specified processes in glass works, rolling mills, and forges; in the meantime, however, life or limb of the young in these processes was not to be exposed to any special risk or danger.

These provisions were not the exact counterpart of recommendations made by the Bureau of the International Association in the program submitted by it. It had proposed to prohibit the work in question to young persons under eighteen instead of under sixteen; by way of special exceptions for States in which similar regulations had not previously existed, it had contemplated a period of transition in which night-rest for young people between sixteen and eighteen could be legally limited to ten hours instead of extended to the required length of eleven hours; among the exceptions pertaining to workers over fourteen, provision had been made for the prohibition's suspension in case of the manufacture of raw materials susceptible of rapid deterioration or otherwise unavoidable injury; and for seasonal indus-

tries, a way was to be left open whereby the period of uninterrupted night-rest could be reduced to ten hours sixty times a year under extraordinary circumsances. The period for bringing the agreement into force in glass and steel industries was fixed at five years for workers over sixteen instead of at ten years for workers over fourteen. None of these proposals found their way into the draft sanctioned at Bern.

The second of the draft conventions concerned the determination of a working day for workers under sixteen and women; and, with the exception of Norway, it was signed by the same countries as signed the former agreement. As regards the program that the Bureau had submitted, the age limit for young workers was changed by the Conference from eighteen to sixteen, while the principles in general were amplified and made much more specific in detail. The prospective convention stood for a ten-hour day, but at the same time allowed the period of work to be otherwise limited through the device of fixing a maximum of sixty hours of work per week with the length of no single workday to exceed ten and one-half hours. The definition of industrial undertakings and the size necessary to include the same within the purview of the proposed convention were identical with the determinations on these points in the other agreement. Hours of work were to be interrupted by one or more rest periods, one of which, at least, was to occur immediately after the first six hours of work; in cases where work was not of more than six hours' duration, no break would be necessary. Extension of the prescribed workday was to be permitted when public interests demanded it, and also under the following circumstances: in cases of *force majeure* involving an interruption of manufacture impossible to foresee and not of periodic nature, in cases where raw materials might otherwise be subjected to rapid deterioration or loss; and in seasonal industries as well as in any industry under exceptional circumstances. Total work including overtime, even in case of the above exceptions outside

of "public interest" and *"force majeure,"* was not to exceed twelve hours a day save in fish, vegetable, and fruit establishments; and overtime was not to exceed 140 hours per year except in the industries first mentioned together with manufactories of brick, tiles, clothing, feather articles, articles of fashion, and artificial flowers, all of which might if neecssary extend overtime to not over 180 hours per calendar year. Nevertheless in no case, not even in any of the above exceptions outside of "public interest" and *"force majeure,"* was the working day to be extended for young workers under sixteen.

The agreement would come into force two years after closing the record of the deposition of ratifications; however, for manufactories of raw sugar from beets, of machine-made embroidery; and in textile mills for spinning and weaving, the interval might be extended from two to seven years, while in States where it was the custom to require eleven hours of work of women and children, the postponement of the agreement's execution might be equally prolonged under certain conditions specified.

These draft conventions having been approved by the Conference, were submitted to the governments interested by a Swiss communication of Sept. 29, 1913.[26] Several weeks later another Letter (Dec. 30, 1913) [27] to the same parties including Luxemburg, whose delegate had been unavoidably detained from the Conference, conveyed the protocol of the meeting. The same Letter proposed Sept. 3, 1914 as the date for holding an international Diplomatic Conference to turn the outlines into real conventions. A later Note (July 14, 1914) [28] stated that the Conference could be considered as assured in view of the favorable replies anticipated and already received, although Russia had intimated dissatisfaction with the agreements, declaring them unsuitable to her conditions of industry, and therefore not of a

[26] *E. B.* VIII, (9-10) 1913, p. 363-366.
[27] *E. B.* IX, (1914) (3) p. 62.
[28] *E. B.* (IX) (7) (1914) p. 287-288.

character to make it desirable for her to participate. Norway also had announced a disinclination to take part, asserting that her own legislation conferred more extensive protection than that offered by the conventions proposed, and that a Bill then pending promised a further extension of her protective law. In conclusion, the Swiss Note recommended that the method of procedure at the Diplomatic Conference of Bern in 1906 be followed in the impending meeting; also that certain sections of the Convention of 1906 pertaining to woman's work be included in the agreement on night-work under consideration; and that editorial improvements be made in the wording of the texts of the proposed conventions.

A Circular Letter of Aug. 7, 1914 contained the following: [29]

"In our Circular Letters of 30th December, 1913, and 14th July, 1914, we had the honor of sending to your Excellency certain communications with respect to an International Diplomatic Conference relating to labor regulation and to submit proposals to your Excellency. The Conference was to have met in Bern on 3rd September, but the present political events do not seem to permit this. We feel sure that you will agree with our decision that the Conference be postponed to some future date."

In Austria a Decree of the Ministry of Commerce under date of Sept. 11, 1915 [30] granted exceptional permission for the night-work of women and young persons in view of the extraordinary circumstances created by the war. The fact that prohibitions on the subject had been adhered to by Austria, without official modification, throughout the first year of the conflict, (one of the avowed reasons for such adherence being that some of the prohibitions had an international basis) portends much for the enforcement of such law in times of peace. Moreover, even then, the permission was not granted indiscriminately, but rather only on condition that the merits of each case should be care-

[29] *E. B.* IX, (11-12) (1914), p. lxxiii.
[30] *E. B.* XI, (1-2) (1916) p. 31-32.

fully tested by the industrial inspector and passed upon by provincial authorities, or in case of disagreement, by the Ministry of Commerce.

CHAPTER IV

PROTECTIVE LABOR TREATIES

At the second meeting of the International Association for Labor Legislation at Cologne (Sept. 26-27, 1902), representatives of the French and Italian Governments entered into informal negotiations with reference to the conclusion of a labor treaty. The matter, which had been broached even previous to this occasion, did not become the subject of immediate action; for a year and over it dragged along with the prospects of its realization growing constantly brighter, until at last, the preliminaries being completed, it became, April 15, 1904,[1] the first of a new order of treaties reciprocally insuring the protection of workmen. By its terms Italians working in France received, in effect, the promise that some day they would enjoy benefits of French labor legislation heretofore denied to foreigners, while Italy agreed to superimpose upon the economic framework of her country certain of the perfections of labor control applied by her neighbor. The advantages reciprocally derived were not identical, a fact which becomes important when the *"pro's and con's"* of international regulation are debated. France benefited in that a competitor became subject to certain restrictions upon industry and Italy profited by the increased protection to be accorded to her laboring classes, in the first instance, by herself. It forms an interesting puzzle to inquire whose was the greater gain. This is not however a complete statement of the situation.

[1] *G. B.* Bd. 3. S. x.
F. B.—Bulletin de l'Office International du Travail, t. III. (1-3) p. I-VI.

By its preamble the two general purposes of the Treaty[2] were presented as follows:

(1) To grant to nationals of either country laboring in territory of the other reciprocal banking accommodations and advantages of social insurance;

(2) To guarantee the mutual maintenance of protective labor measures, and co-operation in the advancement of labor legislation.

As regards reciprocal privileges in the use of banks, precise and effective rules were laid down; in the matter of labor inspection, Italy undertook an important obligation; with reference to the rest, mere principles were announced upon which to negotiate understandings of the future.

The Treaty privileged the nationals of either country to transfer deposits without charge from the State Savings Bank of France to the Postal Savings Bank of Italy, or *vice versa;* and funds thus transferred became subject to the rules applied by the receiving bank to the deposits of its country's citizens. This was the only outstanding provision whose terms of reciprocity were identical and that was made executory by the terms of the Treaty. The one other Article whose application was not left wholly contingent upon future circumstances was Article IV. In this Italy promised to complete throughout her whole kingdom a system of labor inspection offering, for the application of the law, guarantees analagous to those of the French system, and organized with respect to the objects of its special care; *i.e.*, women and children, along four general lines:

(1) Prohibition of night-work;

(2) Age for admission to work;

(3) Length of the workday;

(4) Obligation of weekly rest.

Italy's engagement was its own admission of the inadequacy of labor inspection within her territory. In the matter of regu-

[2] *A. d.*, 1904, t. 92, p. 1269-1274.

lating the night-work of women, she had been very far behind France in the enactment of prohibitory law, and her legislation had remained likewise much inferior in respect of the age limits fixed for the classes to whom such work was forbidden. Similarly deficient or tardy had been Italian legislation concerning the age limits determined for the admission of children into factories. Differences also prevailed in the law respecting the workday; Italy permitted a longer day of work for women and children than did France. But conditions were more on a par as regarded weekly rest. The former decreed such rest for all children under fifteen; the latter, for children under eighteen; and both, for all women. The Italian Government agreed by Article IV of the Treaty to study the means of reducing the daily work of women, and each Government promised to publish an annual and detailed report on the application of statutes and regulations governing child and female labor. By comparison and improvement of legislation, it was anticipated that glaring dissimilarities in the labor laws of the two countries would gradually disappear, and so prepare the way for the conclusion of future agreements.

The rest and major content of the Treaty belonged to what might be termed the realm of speculation; in other words, it outlined what other treaties might enact. In Article I on the subject of bank transfers, provision was made whereby by future agreement the private banks of one country might transfer funds to those of the other, if not gratuitously, at least, at reduced rates. The private banks contemplated were those of industrial centers and frontier towns. It was desired that investments by nationals of one country in savings institutions of the other should receive especially favorable treatment at the hands of the contracting Governments.

With reference to workmen's insurance or pensions, the principle was laid down that the part of the benefit due as a result of premiums paid or deposits made, was to be surrendered to

the laborer upon his withdrawal from the undertaking in which he was insured; otherwise, although an enterprise in France could demand equal insurance premiums from French and Italian laborers, it might refuse to make any return in the event of the foreigner's withdrawal as a consideration for the protection relinquished and the payments already made. Three elements may enter into workmen's insurance:

(1) The contribution of the laborer, for which the Treaty provided as above noted;

(2) That of the employer, regarding which it merely stipulated that there should be reciprocity of regulation between the countries;

(3) State subventions, the benefits of which were to be enjoyed only by the State's own citizens. A country could subsidize a citizen's pension acquired from an institution of the other country if it chose to do so.

Pensions acquired in one State were to be made payable in the other through the medium of insurance institutions and postal service. For employees laboring alternately in France and Italy and thus prevented from fulfilling the requisite conditions for insurance in either country, there was to be devised a special system under which pensions could be made to accrue to such workmen.

In case accident befell a laborer of either country, working in the territory of the other, he or his assigns were to be entitled to accident benefits on equal terms with the subjects of the land in which the accident occurred. This was the principle so earnestly debated and advocated throughout the Delegates' Meetings of the International Association and destined to be incorporated into a noteworthy series of treaties on accident insurance. Certain laws of France involved the direct derogation of this principle. By her municipal law of April 9, 1898, a foreign laborer, the victim of an accident, upon ceasing to reside in French territory, was obliged to accept a sum compounded to three times

the amount of his annuity in lieu of all further pension; and by Act of March 31, 1905, the same principle was retained, with the provision that a foreign insuree's assigns might receive compensation even if they ceased to reside on French territory. If, however, the assigns were not resident in France at the time of the accident, they forfeited all right to compensation. Fortunately the law of 1905 allowed for the modification of these provisions in pursuance of reciprocity treaties on accident insurance, and so safeguarded the possibility of the realization of this principle as advocated by the Treaty of Aprl 15, 1904.

In case of the advent of insurance against unemployment in both countries, an agreement was contemplated by which Frenchmen and Italians working in the territory of either contracting party might share the privileges of such insurance.

In cases where these agreements provided for by Article I should become established, they were to be binding for a period of five years only; thereafter, they might be abandoned upon one year's notice, or otherwise be allowed to renew themselves from year to year by tacit consent. Unforeseen circumstances were to be able to work either abrogation or the more perfect adaptation of the measures if time rendered their original forms undesirable. Of such character were the possibilities contemplated by this Article.

A signal abuse which for some time had attracted the serious attention of governmental authorities was the traffic in Italian children furnished with work certificates falsifying their age so as to admit them to French industry prior to their attainment of the legal age. There was a class of recruiting officers or middlemen who made a business of this traffic. To set on foot measures to stop the evil and preclude its recrudesence, Article Two of the Treaty forecast an agreement that would necessitate governmental certification of the documents involved and a rigid inspectorate, protecting reciprocally young workers of either country when employed in the other. There was also suggested

the plan of forming protective Committees including in their membership as many compatriots of the young foreigners as possible, and functioning in districts where large numbers of them were employed. Because of the small number of French children employed in Italy, this provision became of benefit principally to the much larger number of young Italian laborers in French territory.

On the occasion of an international labor conference in which one of the contracting parties took part, the other was to feel duty bound similarly to participate according to the engagement of Article III of the Treaty.

By Article V, each party reserved the right to denounce the compact at any time by making known its intention one year in advance. Occasion for denunciation would be found in failure to enforce the systems of inspection prescribed or to respect the obligations assumed in reference to protective law for women and children (see Art. 4, S 2), or in any gross violation of the spirit of the instrument, as for example, the curtailment of protective law covering the subjects treated. A protocol [3] was attached, which specified by name the laws of each country whose proper execution was made compulsory by the terms of the instrument, and named the bodies in each country competent to interpret the same in its relation to the laws and to judge as to whether occasion for its annulment had been given by the other party. However much detractors may have laughed at France and Italy over the theoretical parts of their Convention of April 15, France and Italy laughed last, as time revealed.

Swiss-Italian Treaty. July 13, 1904.

On 13th July of the same year, Italy signed with Switzerland a commercial Treaty [4] containing an Article whose provisions were to be made effective by a separate act independent of the

[3] *G. B.* Bd. 3, (1904). S. 154.
[4] 2. Chatelain, *op. cit.*, p. 193.

execution of the rest of the Treaty. This Article (No. 17) authorized the mutual investigation on the part of the contracting powers of the question of workmen's insurance with the object of according in so far as possible to the citizens of each working in the territory of the other equal or equivalent advantages. It is clear that this looked forward to some such arrangement as that contemplated by the Franco-Italian Treaty on the subject, although that Treaty announced the principle of the equality of treatment of foreigners and citizens, while this merely specified reciprocity in the treatment of foreigners.

German-Italian Treaty, Dec. 3, 1904.

It is very evident that Italy did a full year's work in 1904 with respect to labor agreements; just before the year closed, she concluded with Germany a commercial Treaty[5] identical in its terms with Article 17 of the Swiss-Italian Treaty. The action would seem to presuppose an intention upon the part of Italy to work radical improvement in her insurance system; for were Germany to accord to Italian workmen within her realm insurance advantages equal to those enjoyed by her own subjects and then to demand that Italy give German subjects on Italian soil equally favorable privileges, a much heavier burden in the way of reform would be imposed upon Italy than upon Germany.

Compulsory insurance against disease had been established in Germany as early as 1883; employees met two-thirds of the expenses of the system, and employers, one-third. Compulsory accident insurance had been introduced by a law of 1884; under it employers became members of insurance associations and were obliged to defray the cost of all indemnities. In 1889 there had been organized an insurance system against sickness and old age, to which all salaried persons over sixteen years old and not having an annual income in excess of 1000 marks were compelled to subscribe, thereby receiving invalidity benefits

[5] *Ibid.*, p. 194.

in case of need, and a regular pension at the age of seventy — if payments had been made for a period of thirty years. The funds were derived partly from contributions of employees classified into five groups paying different premium rates; partly, from employers who duplicated the premiums of the employees; and the rest, from the State which made an annual donation of fifty marks for each pension. By way of comparison, we may note that in 1910 France prescribed for laborers receiving less than three thousand francs a system of insurance which, not unlike Germany's, derived its support from contributions of employees, employers, and the State, but which made sixty-five instead of seventy the pensionable age. Sickness insurance is prescribed for certain classes. The French system has both compulsory and voluntary features. In both France and England, as well as in Germany, the incidence of compensation for accidents falls entirely upon the shoulders of employers.[6]

Italy's systems of insurance were very inadequate, being non-compulsory in character in so far as related to invalidity and old age, although she had obligatory accident insurance. A state system largely voluntary in character could hardly possess much stability and certainly could not accord to German workmen in Italy the same guarantees that could be granted to Italian laborers in Germany. The self-imposed task that Italy contemplated was not a small one.

Treaty Between Germany and Austria-Hungary, Jan. 19, 1905.

In a commercial Treaty between Germany and Austria-Hungary of Jan. 19, 1905, an article of practically the same nature as that of the two preceding Treaties was included.[7] In addition to specifying the need of reciprocity in the matter of insurance, it propounded the broader subject of reciprocity "in protection of labor." For Austria and Hungary, as for Italy, the thought of

[6] Carlton, *History and Problems of Organized Labor*. p. 310 *et seq.*
[7] L. Chatelain, *op. cit.*, p. 198.

contracting a labor treaty with Germany prognosticated general improvement in their protective labor régimes. Austria possessed compulsory accident insurance supported by laborers and employers, and had also compulsory sickness insurance. Hungary did not have general regulations covering accident insurance; but had a special system for agricultural workers which was obligatory in respect of accidents and voluntary in respect of invalidity, paying benefits in case of death, old age, or incapacity.

Accident Insurance Treaty Between Luxemburg and Belgium. April 15, 1905.

But destiny had reserved for the Kingdom of Belgium and the Grand-Duchy of Luxemburg the honor of devising the first insurance Treaty[8] to specify, in addition to general aims, a *modus operandi* for their realization; in other words, instead of cogitating upon possible law, it laid down the law, and thereby gave to a long mooted prnciple its first practical international application. As between the signatory countries, it established that subjects of one State injured through an industrial accident within the territory of the other should be entitled to the same compensations and guarantees as subjects of the State within which the injury was received, exception being made in case of laborers injured when employed temporarily; *i.e.,* for not more than six months, by a business concern whose headquarters were located in the State that was not the scene of the accident. In such cases the insurance law applicable would be that of this latter State. By a supplementary agreement of May 22, 1906, the terms of this exception were specified as being applicable to persons employed by transport lines and working intermittently, but habitually, in the country other than the home of the enterprise.[9] Outside of these exceptions, persons were to be eligible to receive insurance benefits in the foreign State, who would have been eligible to such had

[8] *G. B.* Bd. IV. S. 305-506.
[9] *E. B.* I, (9-12) pp. 373-374.

the accident occurred in their native State. As pertained to documents, stamps, records, *etc.*, advantages and exceptions incident to the insurance administration of one State were to be equally applicable to the administration within its confines of the law of the other State, while the magistrates of the two High Contracting Parties were pledged to lend reciprocal assistance in execution of the law. Ratifications were to be exchanged as soon as possible in Brussels, and the Treaty was to go into effect ten days after its official publication and to be terminated one year after the day of its denunciation by either party. By an Act of May 12, 1905,[10] the Government of Luxemburg was empowered to modify laws of the realm when necessary in order to put into operation an international agreement that aimed at reciprocity in insurance administration. The ratfications of the Treaty were exchanged in the following autumn, Oct. 25, 1905.

German-Luxemburg Accident Insurance Treaty. Sept. 2, 1905.

The next Treaty on accident insurance,[11] signed by the German Empire and the Grand-Duchy of Luxemburg during the same fall, confined itself to an affirmative statement of that which constituted the exception in the Belgian-Luxemburg agreement. Employees of an enterprise extending its operations from one country into the other for a period of not over six months at most remained subject to the accident insurance legislation of the State in which the enterprise was domiciled, even if the accident occurred in the other State. Forestry and agricultural pursuits were excluded from the purview of this arrangement. Railroad employees were specifically included. If dispute arose as to what laws were applicable, the decision rested with the authorities of the State in which the headquartrs of the business firm involved in the accident were located *i. e.*, in Germany, with the Imperial Insurance Office, and in Luxemburg, with the Government. A

[10] *E. B.* Vol. I, (1906) (9-12) p. 372.
[11] *G. B.* Bd. IV, S. 306-308.

decision by either authority was final and binding upon underwriters of the other country. To guard the party entitled against injustices of delay arising from uncertainty as to what statutes applied in a given case, the insurers first invoked were to take care of the injured party, until it should be determined upon whom the burden of indemnity was ultimately to fall. Other points of minor interest were covered including rules that were to govern in case an establishment so changed its place of operation as to pass from the accident insurance laws of one country to those of the other.

Franco-Italian Pact. Jan. 20, 1906.

As the year 1906 opened, the Franco-Italian Treaty of 1904 began to bear fruit. It had introduced reciprocity in the transfer of funds without charge between the national banks of the two countries, and had proposed a similar arrangement between the private banks of the two countries located in industrial centers or frontier towns. To give effect to this latter possibility, an agreement[12] was now completed whereby deposits to the amount of 1500 francs could be transferred without expense between the private banking institutions of these countries. The monies transmitted were to become subject in such matters as interest to the regulations of the receiving bank, while orders on the International Post Office (*mandats d'office*) were to constitute the medium of transfer and to be exempt from tax. Ratifications were exchanged at Paris Dec. 11, 1906.

Franco-Belgian Accident Insurance Treaty. Feb. 12, 1906.

The Franco-Belgian Treaty[13] was practically the same as the Belgian-Luxemburg Treaty: Subjects of one of the contracting parties meeting with an industrial accident in the territory of the other were to have the same guarantees and compensations as

[12] *A. d.* 1906, t 97, p. 147.
[13] *E. B.* I, (4-6), pp. 153-154.

were provided for the citizens of the State in which the accident occurred. The same principle of the equality of treatment of foreigners and citizens held for assigns of the injured parties and so wrought an exception to the French law of 1905, denying to dependents of foreigners equal rights with those of Frenchmen. Also as in the other Treaty, exception was made for temporary employment of not over six months duration, attention being called to the fact that this exception included persons engaged in transportation enterprises and employed intermittently, whether regularly or not, in the country other than that where the undertaking held its domicile. In case of accident under these circumstances, the law of the undertaking's domicile applied. The Treaty was to take effect one month after its official publication. Ratifications were exchanged June 7, 1906.

A Note of March 12, 1910[14] enlarged upon Article 4, which had merely authorized the authorities of France and Belgium to lend mutual aid in reciprocal execution of the engagement. This Note, which was not to come into operation within three months after it was signed, obligated the signatory States, upon the termination of an inquiry in respect of an accident, to give notice to the proper consular authority in order that he might take cognizance thereof in behalf of the interested parties.

National Accident Insurance Acts.[15] *1901-1906.*

Notifications of the German Federal Council, under dates of 1901, 1905 and 1906, advert to another phase of the international regulation of accident insurance. The Notification of June 29, 1901 set aside in favor of Italian and Austro-Hungarian subjects provisions of Section 21 of the German Accident Insurance Act and of Section 9 of the Building Accidents Insurance Act, which had debarred foreign assigns not domiciled in Germany at the

[14] *E. B.* VI, (1), p. 6.

[15] *E. B.* II, (I) p. 1; *E. B.* I, (1-3), pp. V, I. See also the work of E. Mahaim: *Le Droit international ouvrier* (1913).

time of the accident from claiming compensation or indemnities; likewise the Notification revoked in so far as concerned the same nationalities, provisions of Section 94 (2) of the German Accident Insurance Act and Section 37 (1) of the Building Accidents Insurance Act, which had suspended the right of German indemnity to foreign insurees as long as they were not residents of the country. Similar exceptions were made on May 9, 1905 in favor of the Grand-Duchy of Luxemburg, and on Feb. 22, 1906 in favor of Belgian subjects laboring in Germany. By an Act of Dec. 24, 1903, Belgium had erased distinctions between natives and foreigners before the accident insurance laws of her land; thus having accorded to her Teutonic neighbors for two years and over advantages which the action of the German Federal Council now reciprocated. These Acts illustrate what can be accomplished in the cause of the international protection of labor by applying the principle of reciprocity in national labor legislation.

Franco-Italian Accident Insurance Pact. June 9, 1906.

In an agreement [16] of June 9, 1906, France and Italy adopted definite measures by which to realize in practise the recommendations of the Treaty of 1904 on the subject of reparation for injuries caused by accidents. The principle which had now become common to such treaties was adopted; *viz.*: citizens of either country injured while at work in the territory of the other acceded to the same insurance privileges as were accorded to citizens of the country where the accident happened. To assigns also, whether resident or not in the country of the accident at the time of the accident, or whether having subsequently ceased to reside there, the same principle of the equality of treatment of foreigners and citizens applied. Thus the French law's derogation of the principle was now superseded in so far as concerned Italian as well as Belgian workmen.

However, the Treaty provided that, when French employers

[16] *E. B.* II, (1), pp. 2-4.

conformably to a table of provisional rates annexed to the agreement and subject to revision thereafter. If an *entrepreneur* or insurer vested in the French National Old Age Pensions Fund his liabilities toward Italian laborers, the function of paying the pension might, on demand of an Italian insuree, be turned over to the Italian National Workmen's Disablement and Old Age Provident Fund, the French institution paying quarterly to the latter the monies due. In case of benefits having a fixed rate, the French Fund might make the payment in a lump sum and thereby avoid the nuisance of quarterly payments. Similar stipulations operated for the accommodation of French workmen acquiring indemnities in Italy. Direct remittances from the Italian Fund to French entitled parties were to be made by postal money orders. (*mandats d'office.*)

Should a special inquiry be concluded with reference to an accident, intelligence of the same was to be immediately given to the consular authority of the district within which the injured workman lived when the casualty took place. Fiscal advantages or exemptions granted by one State to documents prerequisite to the acquisition of insurance monies were to apply equally in the other State. If an Italian pensioner not resident in France should fail to receive payments due and appeal to the Guarantee Fund established by French law, competence to deal with the difficulty would not reside in the municipal authorities as under customary procedure, but would rest in the Italian consular authorities at Paris. The conditions governing the exercise of consular power in such cases were to be determined by the authorities concerned in the two countries. Necessity might work the suspension of the stipulations of the Treaty wholly or in part. If one of the powers gave notice of intention to terminate the agreement in accordance with the regulations specifically prescribed

for such action, the force of the arrangement was not to be impaired in so far as it concerned redress due for accidents occurring up to the time of its expiration. The prerogatives and obligations vested in national Funds and consular authorities by the terms of the Treaty were to become of no effect upon its expiration, with necessary exceptions, however, for the regulation of accounts then running and the payment of pensions for which the capital *in toto* had been previously received by a Fund.

Franco-Luxemburg Accident Insurance Treaty. June 27, 1906.

In the same month that France signed the preceding agreement, she signed with Luxemburg an accident insurance Treaty[17] of the same nature as the other Treaties already discussed. The principles covering the Treaty that France signed with Belgium (Feb. 21, 1906) may be repeated almost verbatim in an analysis of this act. It was concluded for an indefinite lapse of time, reserving the right of denunciation to each party under condition of a year's notice.

Franco-German Understanding With Reference to Letters Rogatory.

Before the close of the year 1906, a commendable precedent had been established by the harmonious action of French and German authorities with reference to the status of letters rogatory pertaining to labor accidents and functioning between the two countries.[18] It seems that the German Secretary of State for Foreign Affairs had received from the French Ambassador a letter rogatory emanating from a French justice and requesting the adduction on German soil of evidence relating to a certain industrial accident. The German authorities graciously deferred to the request, whereupon the Government of France vouchsafed its readiness to reciprocate the favor whenever a similar contingency should lead Germany to solicit it. A common basis for the treat-

[17] *E. B.* II, (1), pp. 4-5.

[18] Chatelain—*La Protection internationale ouvriére.* p. 227.

ment of such letters was thus established in a manner highly creditable to the national administrators concerned. This spirit of accommodation is efficacious for the removal of mountains in international relations.

German-Netherlands Accident Insurance Treaty. Aug. 27, 1907.

The German-Netherlands Treaty [19] like the German-Luxemburg Treaty stipulated that persons employed temporarily (not over six months) in one State by an enterprise domiciled in the other should be subject to the compulsory accident insurance laws of the undertaking's headquarters. It differed from some of the other Treaties in its pains to specify that it was compulsory insurance law that was contemplated, and also in the fact that the traveling staff of transportation lines was to be subject to the insurance law of their line's domicile irrespective of the length of their employment on foreign soil or the foreign situs of any accident. But these topics which constituted the gist of the German-Luxemburg Treaty, were made to appear the exceptions in the present Treaty, whose principal and affirmative declaration was that, subject to the exceptions noted, those enterprises belonging to categories of undertakings covered by the insurance laws of both States and having headquarters in one State but operating in the territory of the other, should be governed by the accident insurance law of the country of operation. Thus it did not specify the equality of treatment of foreigners and subjects; but in so far as law in either country did not discriminate against foreigners, one might infer that equality of treatment would result from its terms.

Provision was made whereby in case of litigation authorities of one country could obtain the sworn depositions of witnesses resident in the other, while exemptions in respect of stamp duties and fees in the administration of the law of one Government were to apply equally to the administration within its borders of the

[19] *E. B.* II, (3), pp. 350-351.

accident insurance law of the other contracting Government. Also, premium rates were not to be varied by one State so as to be prejudicial to employers whose business houses had headquarters in the other. The basis of ascertaining in the currency of one country the equivalent of wages paid in the other was to be determined in a manner specified, whenever the administration of the law necessitated such calculations. Upon the conclusion of the year following the notice of its denunciation by either party, the agreement would become null and void.

A supplementary Treaty[20] of May 30, 1914 decreed that persons were to become subject to the operation of this agreement even though their domicile should not be that of the institution that carried their risk. This addition may be interpreted as indicating that, in so far as accident insurance law did not positively discriminate against foreigners, it was desired that its privileges; should be shared equally by both native and foreign operatives; and so would indicate that the Treaty favored more than an optional or supererogatory application of the principle of the equality of citizens and foreigners before the insurance laws of either country.

Franco-British Accident Insurance Treaty. July 3, 1909.

The span of two years intervened before another accident insurance Treaty was signed. This time it was between France and the United Kingdom.[21] With the pronunciamento that was its chief principle, we are quite familiar; *viz.*, that of the reciprocal accord of accident insurance to foreign laborers and assigns on the same terms as to citizens. The customary exception for employment of less than six months' duration on soil other than that of the undertaking's domicile was inserted including specifically the intermittent employment common to transportation service. Ratifications were exchanged Oct. 13, 1910, and the Decrees

[20] *E. B.* X, (7-8), p. 197.
[21] *E. B.* IV, (3), pp. 163-164.

notifying the Convention's promulgation were published in France Oct. 28, 1910. In giving effect to this Treaty a British Order in Council stated that questions as to English liability for compensation to French citizens, or amounts of such indemnity, *etc.*, were to be adjudicated by the County Court. Certain conditions were prescribed by which the responsibility for the payment of insurance to French pensioners who had returned to France, was transferred from English to French authorities, that is from the jurisdiction of the County Court to the "Caisse nationale Francaise des Retraites pour la Vieillesse." An arrangement subsequent, and giving effect, to the Treaty, between the British Secretary of State for the Home Department and the French Minister of Labor, providing that in case of periodic payments to a pensioner who went back to France to live, remittance by the County Court to such an insuree should be made every three months, the recipient providing each time a certificate from the Mayor of the Commune in which he lived, testifying that he was alive. The recipient was also to obtain, as often as the County Court required, a medical certificate specifying whether or not he still remained incapacitated. Such certificates were to be authenticated by a *visé* of the prefectoral administration which would attest the status of both the Mayor and the doctor concerned.

Hungarian-Italian Accident Insurance Treaty. Sept. 19, 1909.

The fundamental principle in the Hungarian-Italian accident insurance Treaty[22] of 1909 was the same as in the preceding Treaty. But a feature new to this class of treaties was the declaration that workmen, who coincident with employment outside of territory of either of the contracting countries suffered injury in the service of a business concern domiciled in one of them, were to be entitled to compensation under the compulsory insurance law of the concern's domicile, unless the insurance legisla-

[22] *E. B.* V, (1), pp. 1-3.

tion of the country where the accident happened was found to cover the case. Dependents of injured parties were to receive compensation irrespective of their place of residence at the time of or after the accident. In case subjects resided in one country and drew pension from an institution of the other, means were provided, as in some former treaties, whereby the insurance company in question might transfer its obligation to the institution of the country where the pensioner resided. Moreover, documents exempt from fees when used in drawing pension in one State were to be favored similarly when used for the same purpose within the territory of the other.

Another distinctive feature, also new to treaties of this class, had to do with the creation of a Court of Arbitration in case the pact gave rise to litigious differences. Such a Court was to be instituted upon demand of one of the parties, each State choosing as arbitrators two subjects of its own who would select a presiding officer from some third power. The State in which to convene the Court in the first instance would be determined by agreement and thereafter automatically by the principle of alternation. The precise spot for court proceedings would be designated and made ready by the State selected. These provisions could be varied if the States agreed to carry on the proceedings in writing. Upon application of the Court to the Government, recourse might be had to the authorities of either State for the serving of summons or letters of request in accordance with the customs of Civil Court proceedings. Seven years were to elapse before the Treaty could be denounced, and thereafter withdrawal could in no case be effected until Dec. 31st of the year following that in which warning was given. Certain other provisos were also included to the end that defeasance should not work injustice to those who had become pensioners when the Treaty was in force.

Franco-Italian Pact. June 15, 1910.

We have seen that in consequence of the Franco-Italian Treaty of April 15, 1904, which established a system of monetary trans-

fer to operate between the French National Savings Bank and the Post Office Savings Bank of Italy, various other agreements in execution of principles therein stated were subsequently entered upon; *viz.*, the agreement of Jan. 20, 1906 governing the transference of deposits between ordinary French and Italian savings banks; that of June 9, 1906 regulating compensation for industrial accidents; and now that of June 15, 1910 in protection of young workers of either country employed within the other.[23] Thus despite the critic's animadversion of its hypothesizing tendencies, the Franco-Italian Convention of 1904 has demonstrated that the spinning of theories even on the part of treaties may after all constitute a road to their actual realization in law of the possibilities thus exploited.

Shortly after the conclusion of the Treaty in 1904, France had proposed a basis upon which to formulate measures protecting in the manner suggested the young workers of both countries; and Italy, considerably disturbed about the employment of young Italians in French glass works, agreed to dispatch a representative to enter into negotiations with reference to the French proposals. The negotiations extended over the years 1905-1909 and finally culminated in the agreement of 1910, by which young Italians desiring to work in France and young Frenchmen desiring to work in Italy were obliged to obtain the necessary employment book through compliance with regulations which were in general as follows: The young person in question accompanied by a parent or guardian produced before a consul of his government the employment book issued by his own country. If he was under fifteen years of age, the consent of his legal protector had to be conveeyd in a duly legalized document and deposited at the consulate. When the consular certificate duly certified and bearing the applicant's photograph had thus been procured, he could obtain the requisite employment book from the Mayor or proper communal authority of the foreign State wherein he desired to

[23] *E. B.* V, (4), pp. 329-332.

labor. Where children between the ages of twelve and thirteen were concerned, additional certificates were required, particularly, the French elementary school certificate or the Italian certificate prescribed by Act of July 15, 1877. (No. 3961.)

At the very beginning of the negotiations over the agreement five years previous, Italy had requested that Italian children under fifteen be denied employment books by French authorities; but inasmuch as French children were admitted to work at the ages of twelve and thirteen, the authorities could not see their way clear to make special exceptions in favor of Italian children. Moreover such action would be extraneous to what was contemplated by the Treaty of 1904, which had merely stated that the nature of the documents and forms of the certificates required for presentation to consular and mayoral offices should be determined and properly inspected, and that committees of protection should be organized. The French authorities promised, however, to introduce into the Treaty such measures as would adequately protect young Italian employees, especially those in unhealthy occupations such as the manufacture of glass. Some of its protective measures relating to children under fifteen have been mentioned. The following clauses of the Treaty in further extension of the protective principle are worthy of complete citation: "Employment in unhealthy and dangerous trades shall be regulated by the law in force in the country where the work is performed. In the case of glass and crystal works, dangerous and unhealthy operations which, at the date of the signing of this agreement, may not lawfully be performed by young persons in Italy, shall not be lawfully performed by young persons in France, and reciprocally.

"In view of the fact that the age of protected persons is not identical under the French Act of 2nd November, 1892, and the Italian Act of 10th November, 1907, the Decrees issued in both countries in pursuance of their respective Acts shall specify the age of persons whom it shall not be lawful to employ in the operations in question.

"The two Governments shall use their best endeavors to introduce uniformity in the age of protected persons by means of internal regulations. With this object they shall, if necessary, promise an international Agreement within the meaning of S 3 of the Convention of April 15, 1904."

Various documents and certificates that might be issued from time to time in pursuance of the Treaty were to be exempt from fees in conformity to the law of both countries and their preparation by consular authorities was to be without charge to the young persons concerned. A strict inspectorate with confiscation of all employment books or certificates irregularly issued was also required, together with the record of all such confiscations. Finally in fulfillment of that contemplated by the Treaty of 1904, protective committees were to be organized in large industrial centers, including in their membership as many of the young workers' fellow countrymen as possible and giving gratuitous service. The enforcement of the law in general and of Acts particularly specified, the detection of its violation or any malfeasance in respect thereto, and the reporting of the same to proper authorities were to be within the province of the committees' supervision. The Treaty was to remain in force five years, and if not denounced six months previous to the conclusion of that period, it would continue to be binding for another five-year period, and so on. This is an important feature and is certainly conducive to much greater stability and certainty in international relations than in the cases where treaties may be denouncd from year to year.

Franco-Italian Arrangement, August 9, 1910.

Within a short time Italy and France concluded another agreement growing out of the Treaty of 1904. This arrangement[24] prescribed conditions under which the beneficiaries of persons, whether Italians or Frenchmen, could draw their pensions from

[24] Mahaim—*Le Droit international ouvrier, Annexe* V, p. 328.

institutions of the country in which they lived, although the pension had been originally acquired from an institution of the other country.

German-Swedish Treaty Contemplating Workmen's Insurance. May 2, 1911.

A Treaty of Commerce and Navigation[25] between Germany and Sweden imitated the example of the Swiss-Italian and German-Italian Treaties of 1904, wherein workmen's insurance became an object of contemplation for the parties concerned, in relation to the question of according equal advantages to the subjects of either party laboring within the boundaries of the other. While seeming to contemplate a broader field than accident insurance only, the praiseworthy ends presented by these Treaties had not up to this time (1911) been realized between any of the parties to them, even in the wellbeaten path of accident insurance understandings.

Franco-Danish Treaty. Aug. 9, 1911.

An entirely new type of Treaty made its appearance in the series we are considering, Aug. 9, 1911, called the Franco-Danish Treaty of Arbitration.[26] It provided that differences of a judicial character arising out of the interpretation of treaties were, in default of settlement by diplomatic channels, to be submitted to arbitration at The Hague, except in cases that affected the independence, honor, or vital interest of either of the contracting States, or the interest of third powers; which means, as we pointed out with reference to the proposal of the Portuguese Delegation at The Hague, that either party can reserve from adjudication at The Hague anything it pleases.

But the Franco-Danish Treaty contains the earnest of an advance to higher ground in these particulars. Four classes of

[25] *E. B.* VII, (11-12) p. cv.

[26] *E. B.* VI, (3), pp. 229-230.

questions are by it entirely excluded from any appeal to the reservation above remarked; in other words, the contracting States agreed that under all circumstances certain questions should, as a last resort, automatically become subject to arbitration at The Hague. Of these classes thus made the subjects of compulsory arbitration, the last two are of particular interest to us:

"(3) Interpretation and application of the stipulations of the Convention relating to trade and navigation.

"(4) Interpretation and application of the stipulations of the Convention relating to the matters hereunder indicated:

"Industrial property, literary and artistic property, international private right as regulated by the Hague Conventions, international protection of workers, posts and telegraphs, weights and measures, sanitary questions, submarine cables, fisheries, measurement of ships, white slave trade."

The disagreements relating to No. 4 and subject to judicial authority under territorial law, were to await the decision of national jurisdiction before they were referred to arbitration, and awards of the arbitration tribunal were not to affect previous judicial decisions; but the contracting parties agreed to take measures on occasion to bring about the adoption of the arbitrator's interpretation by the State tribunals. Thus while the Arbitral Tribunal was precluded from annulling the decisions of national tribunals, its decisions were to be looked up to as a standard by which to unify diverse principles of judicial interpretation obtaining within the judcatures of the two countres. Should the parties disagree as to whether a difference belonged to the category of disputes to be submitted to compulsory arbitration, the Treaty invested the Arbitral Tribunal with authority to decide; or, should the parties be unable to reach a compromise, after a year's notification by one of them authority would vest in the Permanent Court to establish such a compromise. The Convention would renew itself for five-year periods under tacit consent.

Swedish-Danish Sick Funds Compact.

Another novel international arrangement [27] was that entered into in the same year (1911) between "Sveriges Allmänna Sjukkasseforbund" ("Swedish General Association of Sick Funds") and "De samverkande danske centralforeningar af Sjukkasson" ("United Central Associations of Sick Funds of Denmark"), terminable after one year's notice by either party. This agreement, entirely unofficial, made it possible for a member of Sick Funds in one Association, changing his residence to the country of the other, to become immediately a member of the Sick Funds there, wholly unhampered by any requirement of entrance fee, age, state of health, period of waiting, *etc.* After Dec. 31, 1911, persons who joined Sick Funds after their fortieth birthday, would not become entitled to this privilege of transfer. The Association with which a constituent cancelled his conection was relieved of all liabilities of the case, and the withdrawer became subject to any special conditions governing the Sick Funds to which he transferred his membership. Annual reports were to be exchanged between the Associations, specifying all Sick Funds, belonging to either organization, that were parties to the agreement. Any serious differences arising between such Sick Funds of the two countries were to be resolved by the chief organizations of each, or as a last appeal, by the Sick Funds Inspector of the country to which membership had been transferred. Jan. 1, 1912 was set as the date for the agreement to take effect.

Draft for Spitzenbergen Convention. Jan. 26, 1912.

A draft [28] under date of Jan. 26, 1912 for an international Convention in respect of labor at Spitzenbergen laid down rules under which employers were to enter into a written contract with each workman; and, in case of sickness, accord to the laborer proper

[27] *E. B.* VII, (11-12) p. cv.
[28] *Bulletin of the International Labor Office.* IX, (8-10) p. 319.

attendance free of charge. In case of accident the employer, beside complying with the foregoing requirement was to pay an indemnity. Another equally salutary stipulation, unusual to drafts for international conventions, and evidently based on the principle that an ounce of prevention is worth a pound of cure, was the prohibition of the sale of alcoholic beverages to the worker by or on behalf of the employer.

German-Belgian Accident Insurance Treaty. July 6, 1912.

Approximately six months after the date of this proposal,[29] Belgium and Germany entered into an accident insurance Treaty[30] that complemented insurance legislation of the two States in 1903 and 1906 respectively. Except for State or transportation undertakings, enterprises domiciled within one country and extending their sphere of operation into the other were to become subject to the accident insurance laws of the country where operations were carried on, provided compulsory accident insurance obtained for the category of establishments in question in both States. We recognize that this agrement is of the same type as the German-Netherlands Treaty. With slight variations, the general exception met with in most of these treaties held good for this; that is, for the first six months of operation in territory of the foreign State, undertakings would be subject to the insurance legislation of the home State in so far as concerned employees who had been previously attached to the works when functioning in the home State. In calculating the period of operation outside the country of domicile with reference to a series of works carried on concurrently or successively, the time would be reckoned from the beginning of the first to the termination of the last of such works; but should an interval of over thirty days elapse between the completion of one operation and the com-

[29] For another Convention of something of this character signed (Oct. 20, 1906) by England and France concerning the recruitment of native laborers in the New Hebrides, see *E. B.* II, (3) pp. 345-350.

[30] *E. B.* VIII, (2), pp 47-49.

mencement of the next, a new period of six months would begin for the operation in question.

Certain State undertakings were to be subject in all cases to the accident insurance regulations of the home State, while, as provided in the German-Netherlands Treaty, the staff of the traveling portions of transportation enterprises were to be protected in all cases by the insurance laws of the home State. Actions for civil liability connected with accidents were to occur under the law of the country whose legislation on compensation applied in the case. The agreement contained the usual stipulations relative to engaging the mutual assistance of authorities in execution of the laws of one State within the other, including exemptions from stamp duties, the intermediacy of consular agencies, the establishment of a standard by which to express value in different systems of coinage, *etc.* Notice of its discontinuance might be given at any time; at the end of the year following such notice, the Treaty would be terminated. The documents ratifying the Treaty were exchanged on 10th January, 1913.

German-Italian Accident Insurance Treaty. July 31, 1912.

Less than a month after the conclusion of the German-Belgian Treaty, the most comprehensive insurance Treaty[31] yet drawn up was signed by the representatives of Germany and Italy. Thus the suggestions of the German-Italian Treaty of 1904 at last materialized, and on an unprecedented scale; for the departments of this Treaty were distinct and four in number, including:

I. Accident Insurance.
II. Invalidity, Old Age and Survivors' Insurance.
III. General Provisions.
IV. Final Provisions (in part, contemplating future conventions).

The part devoted to accident insurance was another repetition of the principle of the equality of foreigners and citizens before

[31] *E. B.* VIII, (3-4), pp. 99-103.

the law of the country in which they labored. The agreement held good for Italian Accident Insurance of agricultural laborers only in case they were insured according to the Italian Act of Jan. 31, 1904. A person might vacate his right to pension by accepting a lump sum equal to three times the amount of his annuity; if the insurers preferred to make over to a pensioner a capital sum equivalent to the value of, and in lieu of, his periodic pension, the insuree was obliged to accept.

The provisions of Part II dealing with invalidity, old age and survivors' insurance were more complicated. It should be remembered in this connection that contributions for the purchase of insurance in German institutions were derived in part from employers as well as from employees, and that not only was insurance compulsory, but it extended its benefits under certain conditions even to Germans working outside their State; *e.g.,* in Italy. Contributions for and in behalf of Italian subjects to the German Invalidity and Survivors' Insurance were to be equal to payments for German subjects, even if the Italians were enrolled at the same time in an institution of their own land; *viz., Cassa Nazionale di Previdenza per la invalidita e per la vecchiaia degli operai,* or *Cassa Invalidi della Marena Mercantile.* An Italian thus doubly enrolled might demand that half of the money used to purchase his insurance in the German institution be paid, in his behalf, by the German insurer to the Italian Fund; in which case the Italian subject or his assigns could claim insurance from the Italian institution only. For claims arising previous to the application for transfer, the German institution would stand liable. Italians might also transfer to their own national institutions additional voluntary insurance bought under German law. Military duty in Italy was to be reckoned as the equivalent of such duty in Germany under the insurance law of the latter. Differences in the insurance legislation of the two States rendered many stipulations of the Treaty applicable to only one of the parties to it.

The subjects of Germany in Italy were privileged to enroll as

members of the Italian National Provident Fund upon an equal footing with Italian subjects save for certain exceptions specified. Such a German insuree could require the refund by the Italian institution of all payments made to it in his behalf, should he leave Italy before the contingency of insurance arose. Italian employers paying premiums to the Fund for workmen of their own nationality were obligated to do the same for German workers. The fundamental principle governing the insurance of Germans in the Mercantile Marine Invalidity Fund of Italy was the same as for the other Fund. If a German drawing pension from either Fund voluntarily situated his home beyond Italian territory, his policy lapsed upon his receipt of a payment triple the amount of his annuity. Should the German leave the country upon the order of Italian authorities, his pension would not suffer suspension, although it might be terminated by the process of triplication; but if his departure were in consequence of conviction for crime, his pension would remain in suspense.

Part III of the Treaty, declarative of general provisions after the order of treaties already studied, enjoined that mutual assistance be accorded by the authorities of each body politic in all matters concerned with the execution of the law; that exemptions from stamp duties and fees, decreed by one country for its own administration, were to be extended to the administration within its confines of the insurance laws of the other; and that the proper consular authorities were always to be notified of the conclusion of an inquiry into an accident relevant to insurance proceedings. Also for the purpose of taking evidence or serving legal papers in foreign jurisdiction, arrangements were contemplated whereby the assistance of the consular authorities of either country might be invoked.

There were also stipulations heretofore unknown to this class of treaties. For the administration of German insurance within Italy, the latter was to send to the German Government a list of the names of Italian doctors, hospitals, *etc.* suitable for medical treatment of injured Germans, besides also seeing to it that

expenses in connection with these individuals and institutions should not become excessive.

Part IV, entitled "Final Provisions," was of the order of resolutions that looked toward future agreements, which we have discovered to be sometimes condemned and frequently made light of as insufficiently practical; but in view of the offspring which they now can boast, we are justified in lending them for a few moments at least our profound and respectful attention. The signatories considered a future convention enlarging the scope of this agreement so as to include agricultural insurance, when such a system should be introduced in Italy as might be deemed equivalent to German Agricultural Accident Insurance. Likewise they looked forward to the conclusion of a convention placing their respective subjects upon the same footing with respect to invalidity, old-age, and survivors' insurance, when Italy in this phase of insurance had evolved an organization equal to that of Germany.

The date for the Treaty's coming into force was April 1, 1913; it could be denounced at any time and would cease to be valid at the end of the year following such notice. Ratifications were exchanged at Berlin March 25, 1913, and six days later there appeared in German official notifications with reference to special measures to be pursued in execution of certain of its articles and paragraphs.

German-Spanish Accident Agreement Respecting Sailors.

An accident contract[32] respecting sailors was concluded between Germany and Spain by an exchange of Diplomatic Notes on Nov. 30, 1912 and Feb. 12, 1913. By this agreement, if a Spanish sailor on board a German ship met with an accident in a German port, or was brought to a German port after the accident, German officials were to notify the competent Spanish consul; similar procedure was obligatory if the port was non-Ger-

[32] *E. B.* VIII, (6-7), p. 247.

man; and if the port was Spanish and at the same time a chief town of a province the civil Government or else the Alcade was to be notified. In case the accident occurred on the high seas, it was incumbent upon the German Consul to notify, if possible, the proper authorities within twenty-four hours from the moment the ship entered a Spanish port. By interchanging the words "Spanish" and "German" reciprocal action was specified for a German injured in the employ of a Spanish ship, except that in the clause last referred to in the agreement, the last two words; *viz.*, "Spanish port" were retained in the reciprocal rephrasing of the clause instead of inserting the naturally expected words "German port." By this substitution of words the agreement lays a double obligation upon Spanish authorities to protect an injured German sailor on board a Spanish ship in a Spanish port; while to protect an injured Spaniard on board a German ship in a German port, the agreement specifies no such double obligation for German authorities, but rather renders that double obligation incumbent upon Germans when the German ship is in a Spanish port; wherefrom there arises the inference that Germans would look after such affairs in their own port quite well enough without relying upon the compulsion of the "twenty-four hour" clause of the agreement, but in view of the less efficient regulation of Spanish ports, this provision was needed to prevent the miscarriage of justice in the latter ports.

Treaty Between Italy and the United States. Feb. 25, 1913.

By reason of the fact that the prerogatives of labor legislation have inhered principally in the individual commonwealths of the American Republic rather than in congressional legislation, and because constitutional tradition upholding the theory of the partibility of soverignty has been very jealous of what is known as "state's rights" in contradistinction to national centralization of authority, the liberty that the United States might otherwise have felt free to exercise in matters pertaining to international agree-

ments in proection of labor has been greatly lessened. An example of about the best we have done thus far in the way of a protective labor Treaty is the agreement signed between Italy and the United States under date of Feb. 25, 1913 in amendment of an old Treaty of Commerce and Navigation of Feb. 26, 1871. The principle clause of the late agreement [33] is as follows:

"The citizens of each of the High Contracting Parties shall receive in the States and Territories of the other the most constant security and protection of their persons and property and for their rights, including that form of protection granted by any State or national law which establishes a civil responsibility for injuries or for death caused by negligence or fault, and gives to relatives or heirs of the injured party a right of action which shall not be restricted on account of the nationality of said relatives or heirs; and shall enjoy in this respect the same rights and privileges as are or shall be granted to nationals, provided that they submit themselves to the conditions imposed on the latter."

There is comparatively little federal law in America, other than that covering federal employees or employees engaged in interstate commerce, that may be termed distinctively protective labor law. As an example of such law we may note that the use of white phosphorus in the manufacture of matches has been effectively prevented through a statute prohibiting the importation or exportation of matches containing the substance, and levying a prohibitive tax upon such matches.[34] At the same time state laws are very diverse and in many instances very deficient, which is a situation that cannot continue indefinitely if we are to maintain a place in the sphere of industrial legislation compatible and comparable with the dignity of our social and political position in the world.

[33] *E. B.* VIII, (9-10), p. 363.

[34] *United States Statutes at Large* (1911-1913), Vol. 37, Part I, p. 81. Chap. 75.—An Act to provide for a tax upon white phosphorus matches, and for other purposes.

In the same year (1913) France and Switzerland entered into an understanding [35] to prevent Frenchmen or foreigners working on French soil and regularly employed by the Swiss Federal Railroads from becoming subject to the old-age insurance systems of both France and Switzerland. The legislation of the two countries was dissimilar, but the agreement dissipated the difficulties which had arisen by stipulating that such employees on French soil might be insured in the Swiss system in place of the French; but if not insured in either, they were obliged to take out protection according to the terms of French law.

As a side light upon the compulsory old-age insurance of railroad employees obtaining in both France and Switzerland, it is worthy of note that by an Act of July 21, 1909,[36] France compelled the great railway lines to insure all employees in a retiring pension scheme, to which contributions were made by the railway companies and by means of deductions from the salaries of the employees. The scope of old-age pension in France was extended by an Act of April 5, 1910,[37] entitling to its benefits employees of both sexes in industry, agriculture, commerce, and the liberal professions, servants, state employees not insured in civil or military systems, and employees of Departments and communes. It was in general a compulsory system with support derived from state subsidies, contributions of employers, and either compulsory or voluntary contributions of insured parties according as the case might require. Foreign laborers came within the terms of its requirements without benefit of employers' contributions or budgetary subventions except as reciprocity treaties with other countries might provide for such privileges.

[35] *E. B.* IX, (3), p. 61.
[36] *E. B.* IV, (4) pp. 302-305.
[37] *E. B.* V, (4) pp. 361-375.

The following clause explains an agreement[88] between Italy and Germany after the outbreak of the present war; and just before Italy's Declaration of War upon Austria-Hungary (May 23, 1915). "The subjects of either of the two States shall continue to enjoy the benefits provided in the laws in force in the other country in the matter of social insurance. The power to take advantage of the rights in question shall not be resticted in any manner."

There are certain principles which in general are common to these international agreements covering insurance, particularly accident insurance. In brief they stipulate for:

(1) Equality of treatment of foreigners and citizens working in the same country, before the insurance law of that country;

(2) An exception for the first six months of an establishment's operation on foreign soil, during which the insurance laws of the State of its domicile apply;

(3) Inclusion of transportation lines in the above exception;

(4) Mutual aid in the administration of the laws of one country within the territory of the other.

(5) Reciprocal grant of special exemptions in the administration of the insurance law of one State within the territory of the other (usually, to the effect that special advantages and exceptions incident to the insurance legislation of one State shall apply to the administration within its territory of the insurance law of the other).

(6) Denunciation of the Treaty to take effect one year after notice; (or, as sometimes stated, at the expiration of the year following the denunciation).

(7) Notification of the inquiry into an accident to the proper consular authority, (frequently, under the condition that such notification be tendered immediately, upon the conclusion of the

[88] *E. B.* XI, (6-7), p. 181.

inquiry, to the consul in the district where the injured party resided at the time of the accident.)

(8) Facilities by which insurance acquired by individuals in a foreign country may be paid to them through institutions of their own country.

(9) A forecast of possible treaties of the future.

The foregoing treaties on accident insurance may be roughly classified in groups according to the above principles. Treaties completely characterized by principle No. 9 in so far as relates to workmen's insurance are the Swiss-Italian (1904), the German-Italian (1904), the German-Austro-Hungarian (1905), and the German-Swedish (1911). The same is true of the Franco-Italian Treaty (1904) in so far as it relates to accident insurance.

A group of agreements providing in general that firms operating in the territory of the other country less than six months are to be subject to the accident insurance law of the country of operation, are the German-Luxemburg Treaty (1905) to which principles 2-3-4-5 apply, the German-Nethrlands Treaty (1907) to which principles 2-4-5-6 are applicable, and the German-Belgian Treaty (1912) to which apply the same principle 2-4-5-6.

The category to which belong the largest number of treaties, is distinguished by a precise declaration of the principle that, in respect of compensation for accidents, subjects of either party working in the territory of the other are to enjoy equal privileges with the citizens of the land in which they labor. This group in which are all of the following treaties, may be further subdivided. To the Belgian-Luxemburg Treaty (1905), the Franco-Luxemburg Treaty (1906), and the Franco-Belgian Treaty (1906), principles 1-6 inclusive apply, covering also principle 7 in the case of the last-named Treaty; by the Franco-Italian agreement (1906), the Hungarian-Italian agreement (1909), and the German-Italian agreement (1912), principles 1-4-5-6-7-8 are clearly stated, including No. 9 in the instance of the German-Ital-

ian Treaty. The Franco-British Treaty (1909) contains principles 1-2-3-4-6-8.

Much however that is not stated in a treaty in so many words may be enacted in pursuance of its interpretation by a protocol or by administrative authorities. Moreover, the existence of other law may make unnecessary a statement of principle that would otherwise occur. Therefore, if an insurance treaty does not formally specify that subjects of both countries are to be treated equally in respect of the insurance law of either, it is patent that the omission of itself constitutes no proof that the principle is not applied by the parties in question. Thus we find Germany by virtue of her national legislation applying various phases of this principle in her treatment of laborers of Belgium and Luxemburg within her territory, although her accident insurance Treaties with these countries do not make any statement specifically to this effect.

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